IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.01.2016

CORAM

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P. No.3080 of 2016 &
W.M.P.No.2532 of 2016

Tvl.The Audio People,
Rep.by its Partner,
A.T.Sahul Hameed,
No.88, G.N.Chetty Road,
Chennai - 600 017. .. Petitioner

Vs.

The Commercial Tax Officer,
Pondy Bazaar Assessment Circle,
46, Greenways Road,
Chennai - 600 028. .. Respondent

PRAYER : Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the files of the respondent in CST.No.818297/2011-12 dated 16.12.2015 and connected proceeding in RC57/B1/2016 dated 21.01.2016 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan

For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader [Tax]

O R D E R

By consent, the Writ Petition is taken up for final disposal at the admission stage itself.

2.The petitioner/Tvl.The Audio People, who is the registered dealer under the provisions of Central Sales Tax Act, 1956, has filed the present Writ Petition seeking to quash the orders of the respondent passed in CST.No.818297/2011-12 dated 16.12.2015 and connected proceeding in RC57/B1/2016 dated 21.01.2016.

3.The case of the petitioner is that it is a registered dealer and assessee on the files of the respondent. For the assessment year 2011-12, the petitioner effected inter-State sales to various buyers and reported total and taxable turnover of Rs.33,50,153/- including a turnover of Rs.23,95,914/- being sales made to "SEZ". Thereafter, though the respondent has accepted the turnover reported by the petitioner, they have adopted higher rate of tax at 14.5% vide their proceedings dated 16.12.2015 for want of Form 'C' and Form 'I'. Therefore, it is the grievance of the petitioner that since they could not obtain Form 'C' and Form 'I' inspite of several reminders, they were unable to file it before the respondent. Thereafter, on getting the Form 'C' and Form 'I', the petitioner, by invoking Section 12(7) of the Central Sales Tax (Registration and Turnover) Rules, 1957, filed the same for a turnover of Rs.20,58,039/- along with representation dated 19.01.2016 requesting the respondent to revise the order. However, the respondent refused to pass the revised order.

4.Learned counsel appearing for the petitioner submitted that in an identical circumstances, the Commissioner of Commercial Taxes, Chennai, issued a circular dated 01.02.2000, by stating that instead of driving the assessee to go on appeal for reopening and considering the "C" Forms filed at the time of hearing the appeal, the Assessing Officer themselves may reopen the cases admitting the new "C" Forms and passing the revised assessment order upon verifying the correctness and genuineness of the same. While such being the scenario, the action of the respondent in not passing the revision order is arbitrary and illegal, besides it is also against the ratio laid down by the Full Bench of this Court in the case of State of Tamil Nadu v. Arulmurugan and Company (CDJ 1982 MHC 132). With these submissions, he prayed for allowing the writ petition.

5.Per contra, learned Additional Government Pleader (Tax) appearing for the respondent submitted that the Writ Petition is not maintainable, as the assessee / writ petitioner has invoked this jurisdiction despite the availability of an equally efficacious alternative remedy of filing an appeal.

6.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

7.Given the facts and circumstances of the case, it is relevant to extract Section 12(7) of the Central Sales Tax (Registration and Turnover) Rules, 1957, which is reproduced hereunder:

"Rule12.(7)- The declaration in Form 'C' or Form 'F' or the certificate in Form 'E-1' or Form 'E-II' shall be furnished to the prescribed authority within three months after the end of the period to which the declaration or the certificate relates:

Provided that if the prescribed authority is satisfied that the person concerned was prevented by sufficient cause from furnishing such declaration or certificate within the aforesaid time, that authority may allow such declaration or certificate to be furnished within such further time as that authority may permit. "

Though specific time has been provided in filing Form "C" under Rule 12(7) of the CST (R&T) Rules, under the proviso of the said Rule, the power is vested with the Prescribed Authority to allow such declaration forms/ certificates to be furnished within such further time on being satisfied that the person concerned was prevented by sufficient cause from furnishing such declaration forms/certificates within the time prescribed in the said Rules.

8.The facts which are not disputed in the cases on hand show that the petitioner is regularly filing their monthly returns and complying with the statutory requirements. The respondent has also accepted the turnover reported by the petitioner as correct and determined the same. However, for want of Form 'C' and Form 'I', the respondent adopted higher rate of tax at 14.5%, which in my view, cannot be sustained in view of a circular dated 01.02.2000 issued by the Commissioner of Commercial Taxes, Chennai. For better appreciation, the same is reproduced hereunder:

"the first original assessment order is to be passed with the maximum available 'C' forms. However, where the party subsequently produces 'C' Forms from other States invoking the provision that he(assessee) had tried his best, but it was beyond his control, because 'C' Forms were either not readily available or not readily issued in those States, the Assessing Officers have to be liberal in reopening the reassessing of such cases. Further the High Court of Madras has held in the case of M/s.Arulmurugan and

Co.,(1984) reported in 51 STC 381 that the proviso to Section 8(4) does not insist that the assessee should establish before the prescribed authority that he has prevented by sufficient cause from filing the 'C' Forms in time. 'Sufficient Cause' spoken of the Section 8(4) is sufficient cause which appeals to the mind of the authority concerned and which enables it to allow further time without bothering about any onus on the assessees. Following the decision, this facility must be extended without fail. Instead of driving the assessee to go on appeal for this simple matter and getting case remanded by the appellate forum for reopening and considering the 'C' forms filed at the time of hearing the appeal, the Assessing Officers themselves may reopen the cases, admit the new 'C' forms, check on their correctness and genuineness, and pass revised assessment orders, as long as the period does not exceed the period of limitation. Thus the instruction insists that 'Sufficient Cause' spoken of the Section 8(4) is sufficient cause which appeals to the mind of the authority concerned and which enables it to allow further time without bothering about any onus on the assessees. Hence, even if the dealer fails to explain the reason for the delay, the respondent has to independently apply his mind and decide about the 'C' forms, without insisting the onus on the assessee. ".

The above said circular itself has been based on the basis of Arulmurugan's cased (cited supra) passed by the Full Bench of this Court. Relevant portion of the said judgment is extracted below:

"19. We do not think there is any room for the perplexity given expression to by the learned Government Pleader. Given the assessing authority's undoubted power to allow further time for C forms to be filed on sufficient cause, the rest of it is mere procedure or follow up action. Where the assessing authority is satisfied, in a given case, about the existence of sufficient cause, it must necessarily be followed up by appropriate action, such as reopening the assessment already completed. Perhaps the requisite corrective action can be taken by invoking the assessing authority's statutory power of rectification of mistakes. Even otherwise, the implementation, in appropriate cases, of the power to allow further time cannot be withheld on the excuse that there is not express provision either in the statute or in the statutory rules for reopening the assessment. When the power is there and the facts are there demanding its exercise, the implementation must be done as a matter of course, on the doctrine of implied or ancillary powers. Where there is a power, and where there is a will, there will be a way. It is, however, unnecessary to pursue the line of discussion further, because the particular problem we are concerned with in the two cases before us is quite different. What we are asked to consider, and what we have been engaged in discussing so far, is whether an appellate authority has the same power as the assessing authority to allow further time for accepting C forms, and not how and by what process the assessing authority itself could exercise the power after the completion of the assessment.

20. We may now turn to the facts of each of the two individual references before us. In both the cases, the assessee concerned did not file C forms with the assessing authority before the completion of the assessments. Naturally, therefore, the turnovers in question were charged to tax at the rate of 10 per cent, instead of at the concessional rate of 4 per cent. Both the assessees appealed against their respective assessments. In both the cases, leave to file the relevant C forms was asked for, at the appellate stage. The Appellate Assistant Commissioner, however, declined to receive the C forms, and confirmed the assessments. On further appeal before the Tribunal, the assessees produced the C forms once again.

At this stage, the Tribunal entertained them. While doing so, the Tribunal felt satisfied that there was sufficient cause for not filing the C forms before the assessments were over. The final orders of the Tribunal, however, were different in the two cases. In one case, the Tribunal set aside the assessment and directed the assessing authority to make the assessment afresh on the basis of the C forms received at the appellate stage. In the other case, without setting aside the assessment, the Tribunal forwarded the C forms to the assessing authority, directing that authority to scrutinise the C forms and find out if they complied with the formalities.

21. Having regard to the considerations which we have set out in the foregoing paragraphs, we must uphold the decision of the Tribunal in both the cases. We hold that the Tribunal has the power to receive C forms at the time of the appeal, for sufficient cause. The Tribunal can then proceed to the next step of applying the concessional rate of tax to the turnover covered by the C forms. Or, the Tribunal may remand the case to the Appellate Assistant Commissioner. The remand may be for the specific purpose of going into the question of sufficient cause. The remand may also be loaded with a finding by the Tribunal that there has been sufficient cause, leaving the scrutiny of the C forms alone to be undertaken on remand. The Tribunal may, if satisfied about the sufficient cause set aside even the assessment order, and direct the assessing authority to re-do the assessment, in which event there would be no occasion for the assessing authority to go into any question of "delay" in filing the C forms, for with the setting aside of the assessment the whole thing is once again at large. It is needless to add that whatever has been stated by us as respects the Tribunal's power and the modes of its exercise apply, mutatis mutandis, to the Appellate Assistant Commissioner in like situations occurring in the appeals before him."

9.In view of the above said Full Bench Judgment of this Court and also the circular dated 01.02.2000 issued by the Commissioner of Commercial Taxes, Chennai, the Writ Petition is allowed by setting aside the impugned orders dated 16.12.2015 and 21.01.2016 and directing the respondent to accept the Form "I" filed by the petitioner on 19.01.2016 for the sales made to "SEZ" for the assessment year 2011-2012 and pass orders afresh in accordance with law. Consequently, connected Miscellaneous Petition is closed. No Costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Commercial Tax Officer,
Pondy Bazaar Assessment Circle,
46, Greenways Road,
Chennai - 600 028.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.5159
+1cc to the Government Pleader, S.R.No.5310

W.P. No.3080 of 2016 &
W.M.P.No.2532 of 2016

rsy(CO)
srg(25/02/2016)