

8*IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.01.2016

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.3084 to 3092 of 2016

and

W.M.P.Nos.2536 to 2544 of 2016

Ultrust Solution (India) Pvt Ltd,
Rep. by its Managing Director Mr.P.Muthuramalingam,
758, Main Street, Dr.Ambedkar Nagar,
Thiruvottiyur, Chennai-19. ... Petitioner in
all the petitions

Vs

The Commercial Tax Officer,
Thiruvottiyur Assessment circle,
791, Thiruvottiyur High Road,
I Floor, Thiruvottiyur, Chennai-19. ... Respondent in
all the petitions

Prayers:Writ Petition filed U/A 226 of the Constitution of India
preferring to issue

- The Writ Petition No 3084/2016 is for a writ of certiorari calling for the records relating to the proceedings of the respondent in TIN/333331101733/2007-08 dated 12.01.2016, quash the same .
- The Writ Petition No 3085/2016 is for a writ of certiorari calling for the records relating to the proceedings of the respondent in TIN/333331101733/2008-09 dated 12.01.2016, quash the same.
- The Writ Petition No 3086/2016 is for a writ of certiorari calling for the records relating to the proceedings of the respondent in TIN/333331101733/2009-10 dated 18.01.2016, quash the same.
- The Writ Petition No 3087/2016 is for a writ of certiorari calling for the records relating to the proceedings of the respondent in TIN333331101733/2010-11, dated 18.01.2016 andquash the same.
- The Writ Petition No 3088/2016 is for a writ of certiorari calling for the records relating to the proceedings of the

respondent in TIN/333331101733/2010-11, dated 3.9.2015 and consequently direct the respondent to refund the sum of Rs.2,48,141/- quash the same.

- The writ petition No 3089/2016 is for a writ of certiorarified mandamus calling for the records relating to the proceedings of the respondent CST/817442/2010-11, dated 14.05.2015 and consequential proceedings in CST/817442/2010-11, dated 1.10.2015 and quash the same.
- The Writ Petition No 3090/2016 is for a writ of certiorari calling for the records relating to the proceedings of the respondent in TIN/333331101733/2012-13 dated 18.01.2016, quash the same.
- The Writ Petition No 3091/2016 is for a writ of certiorari calling for the records relating to the proceedings of the respondent in TIN/333331101733/2013-14 dated 18.01.2016, quash the same.
- The Writ Petition No 3092/2016 is for a writ of certiorari calling for the records relating to the proceedings of the respondent in TIN/333331101733/2014-15 dated 18.01.2016, quash the same.

For Writ Petitioner : Mr.S.Prabhakaran

For Respondent : Mr.Kanmani Annamalai

AGP (Taxes)

COMMON ORDER

This Court repeatedly in numerous cases has set aside the orders of the assessing authority with directions to consider all the materials, to give proper reasons for not accepting the objections, to give proper opportunity including personal hearing, to apply their mind independently and not to follow the report of the enforcement wing officials and that the enforcement wing officials have no power to collect cheques. The Commissioner has also issued circulars following the directions of this Court. It appears that the orders as well as administrative instructions have only fallen on deaf ears and as a result, many writ petitions are being filed on similar grounds. Hence, this Court is passing a detailed order.

2. The common grievance of the petitioner in W.P.Nos.3084 to 3087 and 3090 to 3092 of 2016 is that though common objections were submitted by the petitioner seeking copies of third party documents, an opportunity to cross-examine the dealers at other end and a personal hearing, the same have not been granted by the respondent and the contentions have not been considered by the respondent. The further grievance of the petitioner is that though the 'C' Forms and other documents have been submitted, the respondent has not considered the same and has passed the impugned proceedings.

3. Whereas the petitioner filed W.P.No.3089 of 2016 alleging that the impugned order dated 14.05.2015 has been passed without affording any opportunity and thereafter, the petitioner submitted all the statutory forms and requested the respondent to revise the earlier order. However, the same was rejected by the impugned order dated 03.09.2015 stating that the revision under Section 84 cannot be invoked for a revision under CST Act. Aggrieved thereby, the petitioner has challenged both the proceedings.

4. The grievance of the petitioner in W.P.No.3088 of 2016 is that ITC has been reversed for non-submission of statutory 'C' forms under the CST Act and that the order is consequence to the order passed under the CST Act. Further, Rs 2,46,141/- (Rupees Two Lakhs Forty Six Thousand One Hundred and Forty One only) was collected and once the order is reversed under the CST Act, the impugned order under the TNVAT could not survive and the amount collected has to be refunded.

5. By consent, the main writ petitions themselves are taken up for final hearing.

6. The learned Counsel for the petitioner painstakingly contended that the order passed by the respondent is a non-speaking order as various contentions raised in the objections have not been considered at all. He also contended that when third party documents have been relied upon, it is incumbent on the part of the respondent to furnish the relevant copies and also provide an opportunity to cross-examine the dealers at the other end. He further contended that while passing revision orders under Section 27 which contemplates an enquiry and therefore, personal hearing must be given. Despite the fact that the respondent was asked to apply his mind to the explanations and afford a personal hearing was sought for, the respondent has not granted the same. The learned Counsel also contended that being a quasi-judicial officer, the respondent must apply his mind independently to the objections and cannot rely upon the statement made to the officer or the report of the officer.

7. Moreover, the learned Counsel for the petitioner submitted that a cheque for a sum of Rs 11,98,512/- (Rupees Eleven Lakhs Ninety Eight Thousand Five Hundred and Twelve only) was forcibly collected without any authority and therefore, the same cannot be treated as acceptance of liability. In this regard, he placed reliance upon Circular No 7/2014 issued by the Commissioner of Commercial Taxes Department. He also contended that once the statutory forms are furnished, the same have to be considered by the respondent and an order to that effect has to be passed. However, the respondent has considered neither the documents nor the objections.

8. The learned Counsel for the petitioner also contended that it is only mandatory under the CST Act to deal with the items mentioned in the Registration Certificate and it is not mandatory under the TNVAT Act. The only mandate is to mention the purchase and sales turnover in the returns, which the petitioner has made and therefore, when all the documents are available, the respondent cannot reverse the ITC claiming that transactions with registered dealers who have deviated from their routine are bogus. He submitted that though the purchase bills and vehicle particulars were submitted to the respondent, a finding has been given as if the purchase bills have not been furnished.

9. Insofar as the assessment under the CST Act for the year 2010-11 in W.P.No.3089 of 2016 is concerned, the learned Counsel submitted that the impugned order dated 14-05-2015 has been passed without notice. The learned Counsel submitted that the respondent has powers to grant further time as per the provisions of the Act. Subsequently, the form was submitted along with the objections dated 21.09.2015 and a request was sought to revise the assessment. However, the same was turned down by the respondent refusing to exercise the power vested in him without considering the provisions. He further submitted that 'C' forms can be submitted at any time even after the assessment orders are passed and once they are filed, the same have to be considered and the orders revising the assessment have to be passed.

10. Insofar as W.P.No.3088 of 2016 is concerned, the reversal of ITC is only consequential to the order under the CST Act, and therefore once the assessment under the CST Act accepting the 'C' Forms is made, the order under the TNVAT Act has to be set aside and the amount collected has to be refunded. The learned Counsel also contend that there cannot be any piece meal assessment for the same year as the respondent has done in respect of the assessment year 2010-11.

11. Under the above circumstances, the learned Counsel for the petitioner urged this Court to set aside the impugned proceedings and sought refund of the amounts collected.

12. Per contra, Mr. Kanmani Annamalai, the learned Additional Government Pleader (Taxes) appearing for the respondent contended that the purchase bills have not been produced as contended by the learned Counsel for the petitioner and they have failed to avail the opportunity provided by the authority through the notice dated 01.10.2015 to submit the documents and hence the petitioner cannot approach this Court and only has to avail statutory remedy.

13. With regard to other issues, the learned Additional Government Pleader also fairly submitted that the respondent is bound to consider all the objections and the documents before passing orders. The learned Additional Government Pleader pointing out to the finding in the impugned proceedings contended that the petitioner having accepted the liability regarding some portion of the orders before the enforcement wing officials and paid money, cannot now raise any objections during the assessment proceedings and therefore, no refund can be made and sought the dismissal of the writ petitions.

14. I have considered the rival submissions and scrutinised the materials on record.

W.P.Nos.3084 to 3087 and 3090 to 3092 of 2016:

15. A mere perusal of the impugned proceedings would reveal that the order has been passed mechanically and in violations of principles of natural justice. Though the respondent has extracted the common objections of the petitioner running to 3 pages on various points in all the orders, the reasons given in all the writ petitions is that having accepted and made the payment to the enforcement authorities, the objections are an afterthought and that the purchase bills have not been submitted. There is no whisper about the copies of the third party documents and the opportunity to cross-examine the dealers, status of the 'C' Forms submitted, finding on reversal of ITC on sale of scraps. It can also be seen that the personal hearing though specifically sought, was also not given.

16. The Honourable Apex Court in the Judgment Reported in AIR 2003 SC 1984 has laid down the necessity for a detailed order in following terms:

"34. The decisions of this Court referred to above indicate that with regard to the requirement to record reasons the approach of this Court is more

in line with that of the American Courts. An important consideration which has weighed with the Court for holding that an ITA No.200-301/Coch/2013 administrative authority exercising quasi-judicial functions must record the reasons for its decision, is that such a decision is subject to the appellate jurisdiction of this Court under Article 136 of the Constitution as well as the supervisory jurisdiction of the High Courts under Article 227 of the Constitution and that the reasons, if recorded, would enable this Court or the High Courts to effectively exercise the appellate or supervisory power. But this is not the sole consideration. The other considerations which have also weighed with the Court in taking this view are that the requirement of recording reasons would (i) guarantee consideration by the authority; (ii) introduce clarity in the decisions; and (iii) minimize chances of arbitrariness in decision making. In this regard a distinction has been drawn between ordinary Courts of law and tribunals and authorities exercising judicial functions on the ground that a judge is trained to look at things objectively uninfluenced by considerations of policy or expediency whereas an executive officer generally looks at things from the stand point of policy and expediency.

35. Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision, are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of ITA No.200-301/Coch/2013 the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the

decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage."

17. In the Judgment reported in AIR 2003 SC 4664, the Honourable Apex Court has observed as follows;

"Reason is the heartbeat of every conclusion. Without the same, it becomes lifeless."

18. Further, the Honourable Apex Court in the Judgment reported in 2010 (9) SCC 496 has held as follows:

"47. Summarizing the above discussion, this Court holds:

a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

b. A quasi-judicial authority must record reasons in support of its conclusions.

c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based

on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

19. The Commissioner of the Commercial Taxes Department, taking note of the mechanical manner in which assessment orders are being passed has issued instructions in circular No 7/2014 dated 03.02.2014 and the relevant passage is extracted below:

"a. Passing of Orders:

Fifteen days time limit shall be given as reasonable opportunity to dealers before passing any order and it shall be reckoned from the date of service of the notice. No order shall be passed without being satisfied of the reasonable opportunity and adopting the following process.

- After issue of notice calling for the objections, if any further time is requested by the dealer within a period of fifteen days, it shall be examined and reply to be given to the dealer regarding granting of time or not as the case may be only if, there exists a genuine reason,
- Objections filed by the dealer on the pre assessment/revision notices shall be examined in each and every issue meticulously and speaking order shall be passed addressing the objections raised. In short, the speaking order which is complete shall be passed.
- As the provision in the TNVAT Act stipulates the conditions of granting or personal hearing, it may be intimated in the notice and it shall invariably be afforded to the dealer irrespective of whether the dealer has opted for personal hearing or not.

b. Revision of Assessment

Under the TNVAT Act 2006, the assessing officers usually issue orders to reverse the ITC on obvious reasons. During the current financial year, the assessing officer may issue notice to reverse the ITC for each month separately under Section 25 of the TNVAT Act 2006. After closure of the financial year, the assessment should be completed initially under Deemed Assessment under Sec.22 of the Act and then only they should take revision proceedings under Section 27 of the Act. Before passing revision order, the dealer should be given reasonable opportunity and personal hearing it required so as per Section 22(4) of the TNVAT Act 2006. No order of revision should be made without affording an opportunity to the dealer as provided under Section 22, 25, 27 of the Act."

20. The above referred judgments and the circular, clearly laydown that being a quasi-judicial authority, the respondent must pass a reasoned order considering and discussing all the materials placed before him. Only, then when his order can be subjected to judicial scrutiny on merits. As rightly contended by the learned Counsel for the petitioner, when the petitioner has raised objections on each point, the respondent must give specific findings on each point. In the absence of the same, orders can only be termed as non-speaking. The Circular is an outcome of various decisions of this Court. Despite the same, the respondent has passed an order without giving reasons for the objections raised by the petitioner. The same reflects the non-application of mind and the lacklustre attitude of the respondent. In the absence of specific findings to the various objections of the petitioner, the impugned proceedings have no legs to survive.

21. With regard to personal hearing, the Hon'ble Division Bench of this Court in the Judgment reported in 33 VST 333 has held as follows:

"22. This Court, therefore, holds that the provision of Section 16(1-A) of the said Act has to be construed in accordance with the said Circular which is by way of contemporanea exposito. So when a specific demand is made for personal hearing the reasonable opportunity of showing cause should include the same in the interest of fairness in procedure.

27. We also hold, in the facts and circumstances of this case, the impugned order by way of revision of assessment should not have been passed without giving the assessee an opportunity of personal hearing. But since the same has been denied, the impugned order is hereby quashed."

22. The petitioner has specifically sought a personal hearing. The part of the objection seeking personal hearing has also been extracted in the impugned proceedings. Unmindful of that and the instructions of the Commissioner in the Circular No 7/2014, the respondent has proceeded to pass the impugned proceedings without granting a personal hearing. The conduct of the respondent is highly inappropriate and the order is therefore clearly in violation of the principles of natural justice.

23. In respect of denial of liability regarding payments made to the enforcement wing officials, this court is not in consonance with the contentions of the learned Counsel for the respondent and the reason given in the impugned proceedings that it is only by way of afterthought , the objections have been raised. It is settled law that the assessing officer is a quasi-judicial authority and has to independently apply his mind and pass orders. The revision proceedings are to be initiated by him on the strength of the documents before him and not on the strength of the report of the enforcement wing officials. Any objections submitted by the assessee to the pre-revision notice must be evaluated on merits and cannot be brushed away. In the Judgment reported in 146 STC 642, the Division Bench of this Hon'ble Court has held as under:

"It is well-settled that the assessing officer is a quasi-judicial authority and in exercising his quasi-judicial function of completing the assessment, he is not bound by the instructions or directions of the higher authorities. We find that in both the matters the assessing officer has acted on the basis of the directions of his higher authority in completing the assessments. We hold that the assessments are not sustainable in law. Accordingly, the orders of assessment in both the matters are liable to be quashed and consequently, the orders of the Special Tribunal confirming the orders of assessment are also liable to be quashed."

24. The power to levy and demand tax is conferred by the statute and not by consent of the assessee. Any tax levied or demanded must be with the authority of law, otherwise, such a levy would be against the constitutional mandate in Article 265 of the Constitution. In the present cases, the petitioner has submitted their objections claiming that there is no stock difference and that the cheque was collected by force. Therefore, the assessing officer is duty bound to look into the books of accounts, documents and verify the claim of the assessee before passing orders.

25. This Court has time and again held that the enforcement wing officials have no authority to collect cheques. Their duty under Section 65 of the TNVAT Act is limited to inspection and drawing of a report. As per Section 65 (3), the enforcement wing officials, even when they discover that there is an attempt to evade tax, they can only seize the records for the purpose of

enquiry. However, the demand can be made only after assessment and that has to be in accordance with law by the assessing authority.

26. At this juncture, it is worthwhile to refer to Circular No.7/2014, wherein the Commissioner has issued administrative instructions as under:

"f) Collection of Cheques during the course of inspection/VAT Audit:

At present there is no provision in the Act/Rules for spot collection of cheques from the dealers during inspection. Many writ Petitions are being filed challenging the collection of cheques during inspections, in the above cases, the High Court of Madras has also issued directions to the Enforcement authorities to return the cheques along with interest stating that there is no express provision in the TNVAT Act 2006. The law officer of High Court has expressed their opinion to handle this issue carefully and not to collect cheques under duress. In such cases, Assessing officer shall collect taxes after making assessment as provision of the Act."

27. This Court in numerous cases has also directed the refund of the amounts so collected. This Court after considering various cases, in its order dated 04.11.2015 in W.P.Nos.35533 and 35534 of 2015 has held as follows:

"4. Learned Counsel for the petitioners would submit that the issue involved in these writ petitions is covered by the decision of this Court in M/s.Astek Electricals and Controls Vs. The Assistant Commissioner (CT), The Commercial Tax Officer Enforcement and The Branch Manager, Canara Bank ((2014) 67 VST 321 (Mad.) and prays for allowing the writ petition.

5.This Court time and again held that there is no power vested with the enforcement wing authorities to compel the petitioners to handover the cheques and despite the same, they are collecting cheques. As rightly submitted by the learned Counsel for the petitioners, the issue raised in the writ petitions is squarely covered by the above decision of this Court.

6.Following the decision in M/s.Astek Electricals and Controls's case (cited supra), these writ petitions are allowed and the

respondents 1 and 2 are directed to return the nos. 147162 to 147165 dated 31.10.2015 for a value of Rs.52,54,722 and cheque bearing No.147162 dated 31.10.2015 for a value of Rs.2,11,224/- respectively to the petitioners forthwith. It is always open to the assessing authority to pass appropriate orders in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed."

28. Therefore, It is very clear that the enforcement wing officials cannot usurp the powers of the assessing officers and collect cheques. Therefore, the petitioner is entitled to refund of the cheque amount.

29. Relating to the reversal of ITC regarding dealers who have claimed to have done transactions deviating from the usual line, this Court is in consonance with the submissions of the learned Counsel for the petitioner to a limited extent that there is no impediment under the TNVAT Act for a dealer to do any business or for that matter venture into new business. But the same has to be reported in the return and proved to the authorities with appropriate documents to show that transaction had in fact materialized with their vendor or the purchaser as the case may be. It is for the authorities to consider the claim based on the documents and ascertain the factual aspect.

30. Insofar as the submission of documents is concerned, the petitioner has submitted a common reply for all the assessment years. In the said reply, the petitioner claims to have submitted "C" Forms, Purchase Bills and books of accounts. In reply the respondent has claimed that purchase bills have not been submitted. The learned Counsel for the petitioner has submitted that the purchase bills and the particulars of the vehicles have been submitted. The above submission is vehemently objected by the learned Counsel for the respondent. It is pertinent to mention here that the production of the "C" Forms have been acknowledged in the order impugned in W.P. No 3087/2016. However, there is no proof for the submission of the purchase bills and the particulars of the vehicles to the respondent. However, considering the fact that the impugned proceedings have been passed in violations of the principles of natural justice, without giving point wise rebuttal to the claim of the petitioner in their objections, without independent application of mind, this Court is inclined to grant one more opportunity to the petitioner to submit the documents by setting aside the impugned proceedings.

31. Insofar as W.P No 3089/2016 is concerned, the impugned order dated 14.05.2015 has been passed without issuing any

notice. As per Section 8(4) of the CST Act, the dealer is liable to produce the " c" Form from the purchaser within the prescribed time or within such further time as that authority may, for sufficient cause, permit. Therefore, there is no time limit prescribed to produce the statutory Form.

32. In the present case, before passing the impugned order, the respondent has not demanded the " c" Forms from the petitioner. When the statute enables the respondent to extend the time for production of the statutory forms, the assessee must be issued with a notice and provided with an opportunity to submit the forms. If the reasons stated for the delay are acceptable, then the authority must grant time. Nevertheless, no notice was issued before the orders were passed. On the contrary, when the petitioner submitted the Forms and requested the respondent to revise the assessment, the same was turned down by order dated 01.10.2015 stating that Section 84 cannot be invoked as per Section 9 (2) of the CST Act. Section 9(2) of the CST Act reads as under:

"Section 9 (2): Subject to the other provisions of this Act and the rules made there under, the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under the General Sales Tax law of the appropriate State, shall on behalf of the Government of India, assess, re-assess, collect and enforce payment of tax, including any interest or penalty payable by a dealer under this Act as if the tax or interest or penalty payable by such a dealer under this Act is a tax or interest or penalty payable under the General Sales Tax law of the State; and for this purpose they may exercise all or any of the powers they have under the General Sales Tax law of the State and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family recovery of tax from third parties, appeals, reviews, revisions, references, refunds, rebates, penalties, charging or payment of interest

compensation, of offences and treatment of documents furnished by a dealer is confidential shall apply accordingly;

Provided that if any State or part thereof there is no general sales tax law in force, the Central Government may, by rules made in this behalf make necessary provisions for all or any of the matter specified in this sub-Section."

33. A reading of the above Section would indicate that Section 9(2) is exhaustive and clearly specifies that the authorities under the state law can exercise all or any of the functions under state for assessment, review, revision, recovery measures, etc for the purpose of assessment and recovery of any tax due under the Central Act. Therefore, the respondent has powers to invoke Section 84 of the TNVAT Act and revise an assessment under the CST Act.

34. The Honourable Apex Court in the judgment reported in 146 STC 1 has held as under:

"40. It was urged on behalf of the appellant-State that declaration forms under the Central Act were not filed within the time and/or were defective. That does not in reality amount to non-compliance of a statutory provision. The respondent No.1-company was claiming exemption and, therefore, had not filed the declaration forms. Some of the forms which were filed were treated to be defective. Undisputedly, before the revisional authority a prayer was made for grant of opportunity to rectify the defects, if any. That was turned down. It is to be noted that under Rule 12(7) of the Central Sales Tax (Registration and Turnover) Rules, 1957 (in short the 'Registration Rules') the declaration form can be filed at a subsequent point of time and not necessarily along with returns. On an application being made before the Assessing Officer the exemption can be granted. The object of the Rule is to ensure that the assessee is not denied a benefit which is available to it under law on a technical plea. The Assessing Officer is empowered to grant time. That means that the provisions requiring filing of declaration forms along with the return is a directory provision and not a mandatory provision. In a given case even the declaration forms can be filed before the appellate authority as an appeal is continuation of the assessment proceedings. In a

given case, if the appellate authority is satisfied that assessee was prevented by reasonable and sufficient cause which dis-enabled him to file the forms in time, it can be accepted. It can also be accepted as additional evidence in support of the claim for deduction. In the instant case, respondent No.1-company made a specific request before the revisional authority which was turned down. Therefore, the question of any non-compliance with the relevant statutes does not arise. It was noted by this Court in Sahney Steel and Press Works Ltd. and Anr. v. Commercial Tax Officer and Ors., [1985] 4 SCC 173 that even in a given case, an assessee can be given an opportunity to collect Declaration Forms and furnish them to the assessing authority if the challenge of the assessee to taxability of a particular transaction is turned down.

41. Respondent No.1-company's stand was that it was granted exemption from payment of sales tax and, therefore, there was no requirement of furnishing any "C Form" for certain periods relating to which there was a doubt about availability of the concession, the declaration Forms were filed. Therefore, the assessing officer shall grant opportunity to the respondent No.1-company to cure the defects, if any in the Declaration Forms."

35. The Honourable Full Bench of this Court in the judgment reported in 51 STC 381 has held as under:

"16. We would proceed now to advert to the different ways in which the discretion to allow further time for filing C forms is conferred by the proviso to Section 8(4) of the Act, on the one hand, and the proviso to rule 12(7) of the Central Sales Tax (Registration and Turnover) Rules, on the other. The proviso in the Act simply says that the C forms shall be filed before the prescribed authority either within the prescribed time or "within such further time as that authority may, for sufficient cause, permit". As a matter of construction of the proviso in the statute, if there is sufficient cause, further time will have to be allowed. The proviso to the Section does not insist that the assessee should establish before the prescribed authority that he was prevented by sufficient cause from filing the C forms in time.

The "sufficient cause" spoken of by Parliament in 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 assessee. The proviso to rule 12(7), however, is a study in contrast. The power to allow further time under this rule is severely circumscribed by the language of its proviso. This proviso is more or less fashioned after Section 5 of the Limitation Act. Under the requirement laid down by the rule-making authority, the burden is on the assessee to make out sufficient cause by explaining why he did not file, and what prevented him from filing, the C forms before the completion of the assessment. What is more, it is for the assessing authority to be satisfied about the existence of sufficient cause and its having prevented the assessee from filing the declarations within time. The difference between the two provisos is not merely one of language or of emphasis. The difference lies in the basic approach to the substance of the power to allow further time. Under the statutory provision, the prescribed authority can allow further time for sufficient cause, without bothering to see whether anything or any occurrence prevented the assessee from filing the C forms within time, and whether the assessee could have filed the C forms within time even in the position in which he actually found himself. The rule, however, casts the burden on the assessee and makes the position more difficult for him to invoke the power successfully. It also narrows down the discretion of the authority concerned. The question, however, is which is to be the master, the proviso in the Section or the proviso in the rule ? There can be no doubt about the legal position that a rule cannot prevail against the statute, by being repugnant to the statute. A study of the structure of the proviso to Section 8(4) shows how Parliament's peculiar preferences had worked in this regard. While Parliament was content to leave to the rule-making authority, namely, the Central Government, the task of prescribing a rule laying down the time-limit for furnishing C forms, the power to allow further time, however, was not relegated to the Rules, but deliberately enacted into the very text of the provisos to Section 8(4). In this statutory format, with Parliament clearly expressing its mind on the subject, the Central Government must be held to possess no authority whatever to make any rule as respects the power to

allow further time, let alone prescribe the conditions subject to which any such power could be exercised. In this sense, the proviso to rule 12(7) must be held to be ultra vires the rule-making power, to the extent that it is inconsistent with, or lays down tests or standards different from, the proviso to Section 8(4). It is quite clear that the proviso to rule 12(7) is both superfluous and badly drafted. The indifferent drafting is all the more regrettable when we remember the legislative history which brought into the statute book the proviso to Section 8(4) as a necessary part of the taxing enactment. Avowedly, the proviso was introduced by Parliament in Section 8(4) to fill in the lacuna disclosed by the previous litigations in the country, culminating in the decision of the Supreme Court in Abraham's case. It is a matter for comment that Parliament's effort at clarity should have been neutralized, in part at least, by clumsy and unwanted rule-making. Be that as it may, we are clear in our minds that where an assessee seeks to file C forms beyond the stage of assessment, the relative power which the concerned authority should invoke is the power defined in the proviso to Section 8(4) and not the power defined in the proviso to rule 12(7).

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 no 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."

36. From the above judgments, it is clear that the assessing authority has powers not only to extend the time to submit "C" Forms but also has powers to re-open the assessment on receipt of the "C" Forms. Therefore, this Court is of the view that the impugned proceedings cannot be sustained and are hereby set aside. It is evident from the impugned proceedings that the differential rate of tax has been collected from the petitioner. The respondent shall consider the "C" Forms submitted and pass revised orders and refund the amounts collected thereafter.

37. Insofar as W.P.No.3088 of 2016 is concerned, the Input Tax Credit, has been reversed as the statutory forms has not been submitted. The petitioner has not submitted any objections to the proposal. Obviously, he did not have any reply or the "C" Forms at that point of time. However, in view of the fact that this Court has already set aside the impugned proceedings dated 14.05.2015 and directed the respondent to consider the "C" Forms and pass revised orders. Once an order under the CST Act is passed, the respondent is duty bound to revise the consequential order under the TNVAT Act. In view of the above, this Court is inclined to set aside the order dated 03.09.2015 and the matter is remanded back for fresh consideration and the respondent shall also pass orders revising the assessment and on the claim of consequential refund.

38. On the maintainability of the writ petitions, it is settled law that there is no absolute bar for entertaining a writ petition when there is an alternative remedy and it is only a self-imposed restriction.

39. In this regard, it is useful to recall the law laid down by the Honourable Apex Court in the Judgment reported in 146 STC 1, wherein it is held as follows:

"23. ...That being the position, we do not consider the High Court's judgment to be vulnerable on the ground that alternative remedy was not availed. There are two well recognized exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken

before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add that where the proceedings itself are an abuse of process of law the High Court in an appropriate case can entertain a writ petition.

24. Where under a statute there is an allegation of infringement of fundamental rights or when on the undisputed facts the taxing authorities are shown to have assumed jurisdiction which they do not possess can be the grounds on which the writ petitions can be entertained. But normally, the High Court should not entertain writ petitions unless it is shown that there is something more in a case, something going to the root of the jurisdiction of the officer, something which would show that it would be a case of palpable injustice to the writ petitioner to force him to adopt the remedies provided by the statute."

40. Here, in the case on hand, the impugned orders are unreasoned and in violations of the principles of natural justice. Hence, this Court is of the view that the writ petitions are maintainable.

41. Before parting, whenever a personal hearing is contemplated under the provisions of the Act or when the assessment is taken up for revision or when a personal hearing is specifically sought for, the respondent must grant the same. While affording personal hearing, the respondent must fix a specific date and time only after receipt of the objections.

42. For the foregoing reasons, the impugned orders in all the writ petitions are set aside. The matters are remanded back to the respondent for fresh consideration. The petitioner is permitted to produce all the documents including the purchase bills, books of accounts and particulars of the vehicles relied upon by them with additional objections, if any within three weeks from the date of receipt of the copy of the order. Upon receipt of the same, the respondent shall fix a date for personal hearing on which date the petitioner shall appear and thereafter, the respondent shall consider the objections and all the documents including the forms submitted by the petitioner and pass orders within four weeks without being influenced by

the report of the enforcement wing officials. While passing orders, the respondent shall also consider the claim of refund of the petitioner.

43. In fine, all the writ petitions are allowed to the extent indicated above. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The Commercial Tax Officer,
Thiruvottiyur Assessment circle,
791, Thiruvottiyur High Road,
I Floor, Thiruvottiyur, Chennai-19.

+9cc to Mr.S.Prabhakaran, Advocate, S.R.No.5659

+1cc to the Government Pleader, S.R.No.4954

W.P.Nos.3084 to 3092 of 2016

and

W.M.P.Nos.2536 to 2544 of 2016

scd(CO)
srg(18/03/2016)

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