IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:27.09.2016

CORAM

THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

W.P.Nos.33897, 33898 and 33899 of 2016
and WMP.Nos.29265 to 29267 of 2016

M/s. Arvind Remedies Limited,
Rep.by it's Managing Director,
Dr.B.Arvind Shah ..Petitioner in all WPs

/vs/

The Assistant Commissioner (CT),
Vepery Assessment Circle,
Chennai 600 006. ..Respondent in all WPs

Prayer in W.P.No.33897 of 2016: Writ Petition is filed under Article 226 of Constitution of India praying for issuance of a Writ of Manadamus directing the respondent herein to rectify the error on the face of records in the assessment proceedings for the year 2010-11 under CST Act, 1956 dated 25.07.2014 by disposing of the petition filed by the petitioner u/s 84 of TNVAT Act, 2006 read with Section 9(2) of CST Act, 1956 dated 07.09.2016 as expeditiously as possible.

Prayer in W.P.No.33898 of 2016: Writ Petition is filed under Article 226 of Constitution of India praying for issuance of a Writ of Manadamus directing the respondent herein to rectify the error on the face of records in the assessment proceedings for the year 2011-12 under CST Act, 1956 dated 25.07.2014 by disposing of the petition filed by the petitioner u/s 84 of TNVAT Act, 2006 read with Section 9(2) of CST Act, 1956 dated 07.09.2016 as expeditiously as possible.

Prayer in W.P.No.33899 of 2016: Writ Petition is filed under Article 226 of Constitution of India praying for issuance of a Writ of Manadamus directing the respondent herein to rectify the error on the face of records in the assessment proceedings for the year 2012-13 under CST Act, 1956 dated 25.07.2014 by disposing of the petition filed by the petitioner u/s 84 of TNVAT Act, 2006 read with Section 9(2) of CST Act, 1956 dated 07.09.2016 as expeditiously as possible.

For Petitioner in all the WPs :Mrs.R.Hemalatha
For Respondent in all the WPs :Mr.K.Venkatesh, GA

COMMON ORDER

Heard Ms.R.Hemalatha, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate, accepting notice on behalf of the respondent. By consent, these writ petitions are taken up for final disposal at the admission stage itself.

2. The petitioner is a Public Limited Company incorporated under the Companies Act, 1956, engaged in the manufacture of medicines and are registered dealers on the file of the respondent under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter called as the TNVAT Act) and the Central Sales Tax Act, 1956.

3. In these writ petitions, the petitioner seeks for a direction upon the respondent to rectify the error in the impugned assessment orders under the Central Tax Act for the assessment years 2010-2011, 2011-2012 and 2012-2013. The assessments were completed based on the 'C' declaration forms produced by the petitioner. It appears that after the assessments were completed, the petitioner received some more 'C' form declarations and therefore, they requested the respondent to accept the 'C' form declarations and to rectify the assessments, by exercising her power under Section 84 of the TNVAT Act. After filing the petitions under Section 84 of the TNVAT Act on 07.09.2016, the petitioner submitted another representation on 15.09.2016 stating that they are retaining the original "C" and "F" forms, as it would be safe to send them by post. However, they attached the statement of "C" and "F" forms, wherever is applicable and requested that all the declaration forms reflecting in their statement are in their possession and the same will be furnished to the respondent, as and when an opportunity is granted to them to appear before the respondent. The petitions filed by the petitioner under Section 84 of the TNVAT Act as well as the representation dated 15.09.2016 sent by speed post are now pending consideration before the respondent.

4. So far as the issue as to whether the respondent would be entitled to accept the "C" and "F" declaration forms, after the assessments are completed, came up for consideration before the Hon'ble Full Bench of this Court, in the case of State of Tamil Nadu Vs. Arulmurugan & Co. [reported in (1982) 51 STC 381]. The plea raised by the Revenue, was that after the completion of assessments, the Assessing Authorities would become functus officio, so far as those assessments were concerned and therefore, he cannot accept any declaration forms subsequently. While repelling such contention raised by the Revenue, the Hon'ble Full Bench of this Court observed as follows:-

> "....Given the assessing authority's undoubted power to allow further time for C forms to be filled 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 then demanding its exercise, the implementation must be done as a matter of course, on the doctrine of implied or ancillary powers. When there is a power, and when 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.....”

5. The above decision of the Hon'ble Full Bench of this Court is affirmed by the Hon'ble Supreme Court in the case of State of A.P. v. Hyderabad Asbestos Corporation Ltd., [reported in (1994) 94 STC 410]. The said decision was rendered, while considering the scope and power of the Assessing Authority under Section 55 of the Tamil Nadu General Sales Tax Act, 1959, which is in pari materia with Section 84 of the TNVAT Act. After the decision of the Hon'ble Full Bench of this Court and the Hon'ble Supreme Court, the Commissioner of Commercial Taxes, Chennai, issued a circular dated 28.02.2001 instructing the Assessing Authorities that they are empowered to revise the assessments under Section 55 of the erstwhile Tamil Nadu General Sales Tax Act, which is in pari materia with Section 84 of the TNVAT Act on furnishing of declaration forms.

6. In view of the above legal position, the respondent should not refuse to accept “C” and “F” declaration forms, solely on the ground that they have been produced by the petitioner, after completion of the assessments.

7. In the light of the law laid down by the Hon'ble Supreme Court as well as the circular issued by the Commissioner of Commercial Tax, it would be well within the jurisdiction of the respondent to accept the forms and consider the same, in accordance with law.

8. Accordingly, there will be a direction to the respondent to entertain the petitioner's petitions under Section 84 of the TNVAT Act, dated 07.09.2016 for all the three assessment years and direct the petitioner to appear in person and produce “C” and “F” declaration forms and on verification, the respondent shall re-do the assessments in accordance with law. In the light of the above directions, the attachment of the petitioner's bank account shall be lifted and no coercive action shall be

initiated till the petitions under Section 84 of the TNVAT Act, are considered and disposed of. The above exercise shall be complied with by the respondent, within a period of four weeks from the date of receipt of a copy of this order.

9. With the above directions, these writ petitions are disposed of. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To
The Assistant Commissioner (CT),
Vepery Assessment Circle,Chennai 600 006.

+3 cc's to Mrs.R.Hemalatha,advocate,sr.54995

+1 cc to Spl.Govt.Pleader,sr.55073

rp(co)
krd 30/9

W.P.Nos.33897 to 33899 of 2016