IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2016

CORAM:

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P.No.43310 of 2016
and W.M.P.Nos.37156 & 37157 of 2016

Standard Power Distributors
Represented by its Partner,
TRK Saraswathi ... Petitioner

vs.

1.The Commercial Tax Officer-IAC
Puducherry.

2.The Appellate Assistant
Commissioner, (CT),
Puducherry. ... Respondents

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus, calling for the records of the files of the first respondent herein in his proceedings dated 18.07.2016 and quash the same with the direction directing the respondents to consider the 2 "C" Forms submitted by the petitioners for a sum of Rs.20,17,311/- by their petition dated 22.06.2016 and to pass a revised order.

For Petitioner: Mr.N.Inbarajan
For Respondents: Mr.Reena Iyswarya,
Additional
Govt. Pleader (Puducherry)

O R D E R

1. Issue notice. Ms.Reena Iyswarya, accepts notice on behalf of the respondents. With the consent of the parties, the writ petition is taken up for final disposal.

2. The limited grievance of the petitioner firm is that the respondent No.1 has declined to revise its order of assessment dated 28.04.2016, on the ground that only an appeal would lie against the said order.

3. The petitioner's contentions both before respondent No.1 and this Court is that, it is entitled to a concessional rate of tax, in respect of inter-state transaction under Section 8 (1) of the Central Sales Tax Act, 1956 (in short "the Act").

3.1. It is the stand of the petitioner firm that since, "C" Forms were received late, they could not be submitted to the Assessing Officer. The petitioner firm, thus, contends that in accordance with proviso to Section 8(4) of the Act and Rule 12 (7) of the Central Sales Tax (Registration and Turnover) Rules, 1957, the Assessing Officer is empowered to accept "C" Forms, even after prescribed period of three months, if sufficient cause is shown. It is therefore, the grievance of the petitioner firm that the first respondent, without having regard to the aforementioned provisions, has passed the impugned order, and thereby, failed to exercise jurisdiction, which is otherwise vested in him.

4. The petitioner firm in support of its submission, that the first respondent has power to accept "C" Forms beyond the prescribed period, if sufficient cause is shown, relies upon the following judgment of this Court: Vispro Foundary Engineers Limited Vs. Commercial Tax Officer, Adayar Assessment Circle, Madras, [(1991) Vol.81 STC 169]; and Tata Global Beverages Limited, Valpari, Coimbatore District Vs. The Commercial Tax Officer, Valparai, Coimbatore District, [2015-16 (21) TNCTJ 27].

5. I have heard the learned counsel for the parties.

6. For the sake of convenience, the relevant provisions of Section 8(4) of the Act and Rule 12(7) are set out herein below:

> "8. Rates of tax on sales in the course of inter-state trade or commerce:
>
> (1) ...
>
> (4) The provisions of sub-section (1) shall not apply to any sale in the course of inter-state trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed Form obtained from the prescribed authority.
>
> Provided that the declaration is furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit. ..."

Rule 12 (1) ...

(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....”

(Emphasis is mind)

7. A bare reading of the proviso to Section 8(4) and Rules 12(7) would show that the Assessing Officer i.e., the first respondent has jurisdiction to accept “C” Forms, even after expiry of the prescribed period of time for submission of “C” Forms, which is three months, after the end of the period to which the declaration or the certificate relates. This power the first respondent is to exercise, if he is satisfied that the person concerned, i.e., the assessee, was prevented by sufficient cause from furnishing such declaration or Certificate within the time frame stipulated for the said purpose.

7.1. The impugned order, however, shows that the first respondent appears to be under a misapprehension that he has no such power. Clearly, the first respondent, has misdirected himself in law and therefore, the impugned order would have to be set aside. It is ordered accordingly.

8. Consequently, the first respondent will reconsider the request of the petitioner firm afresh, and pass an order, therafter, with respect to the request made upon due opportunity being given in that behalf. For this purpose, the representative of the petitioner firm will appear before the first respondent on 13.01.2017 at 11.00 am. In case, for any reason, the aforesaid date is not convenient to the first respondent, he shall be at liberty to fix another date, which is proximate to the date given by above.

9. The writ petition is consequently disposed of in the aforesaid terms and the connected pending applications are closed. There shall, however, be no order as to costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vsm

To

1.The Commercial Tax Officer-IAC
Puducherry.

2.The Appellate Assistant Commissioner, (CT),
Puducherry.

1 cc to Mr.N. Inbarajan, Advocate Sr.73091
+ 1 cc to Government pleader Puducherry SR.73639

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RSY(CO)
EU 18.1.17