IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE **S.MANIKUMAR**
and
THE HONOURABLE MR.JUSTICE **R.SURESH KUMAR**

T.C.(Revision) No.63 of 2017
and
CMP No.20803 of 2017

M/s.Pondy Die Castings (P) Ltd.,
Represented by its Director
P.Prasad,
S/o.A.Prabhakara Rao
No.A1 and A2, Industrial Estate
Sedarapet,
Puducherry - 605 111 ... Petitioner

versus

Appellate Assistant Commissioner
(Commercial Taxes)
Puducherry ... Respondent

Tax Cases (Revision) filed under C Rule (40)(1)(a) against the order of the Sales Tax Appellate Tribunal, Puducherry dated 17.03.2017 made in Tax Appeal No.16 of 2016.

For Petitioner : Mr.Gopinath
for Mr.P.Suresh

For Respondent : Mr.J.Kumaran
Government Advocate, Puducherry

ORDER

(Order of the Court was made by **S.MANIKUMAR, J.**)

Tax Case Revision is filed against the order, dated 17.03.2017, made in Tax Appeal No.16 of 2016, by the Pondicherry Value Added Tax Appellate Tribunal, Puducherry, on the following substantial questions of law:

(i) Whether the Assessing Officer has got power to pass the order for years 2004-2005 and 2005-06 on 06.01.2016 after almost 11 years from the end of the year which is beyond the period of limitation is sustainable in law?

(ii) Whether Section 9(2) of the Central Sales Tax Act, 1956 read with Rule 5(6) and 5(10) of Central Sales Tax (Pondicherry) Rules, 1967 is applicable to the petitioner's case that where, for any reason, the whole or any part of the turnover of business of a dealer has been assessed at a rate lower than the rate at which it is assessable, the assessing authority may, at any time within a period of five years from the expiry of the year to which the turn relates, re-assess the tax?

(iii) Whether the assessing officer has got power to over look the provision of the Central Sales Tax Act, 1956 and Central Sales Tax (Pondicherry) Rules, 1967 is unsustainable in law?

(iv) Whether imposition of the additional tax @ 10% for non-submission of Form 'C' for CST sales made for the year 2004-2005 and 2005-06 is sustainable in law?

2. Earlier, this Court vide order dated 27.10.2017 has allowed Tax Case Revision Petitions viz. Nos.37 and 39 of 2017, preferred by the appellant on the same set of facts, against the orders made in Tax Appeal Nos.14 & 15 of 2016 dated 17.03.2017 and at paragraph Nos.52 & 53, held as follows:

> "52. If initial assessment is permitted to be done, at any time, say in the case on hand, after a decade, after the submission of the returns, for the years 2004-2005 and 2005-2006 and if for any reasons, the whole or part of the turn over is assessed at a rate lower than the rate at which it is assessable then, it would give leverage to the Taxing Authority, to do assessment, as in the case on hand, after 10 years and re-assess upto a further period of another five years, on the whole, 17 years.
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> 53. When a statute mandates re-assessment to be done, within five years, it cannot be contended that assessment can be done at any time. When the assessee is mandated to submit returns, within a prescribed period and the Assessing Officer has to scrutinise the accounts and to conduct any enquiry, if he considers necessary and pass an assessment order, levy tax, if any and collect the same, after the close of the financial years, it cannot be contended that initial assessment can be made at any time. In the light of the decisions stated supra, in particular, Taxing Laws, we are of the view that orders of assessment for the years 2004-2005 and 2005-2006, are not in conformity with Rules 5(6) of Central Sales Tax (Pondicherry) Rules, 1967, and that the same are liable to be set aside."

3. Facts and law pleaded in the instant case are similar to the case, already decided by us. Therefore, the instant Tax Case Revision Petition is also allowed. Order impugned before us is set aside. Substantial questions of law 1 to 4, are answered in favour of the assessee. No costs.

(S.M.K., J.) (R.S.K., J.)
30.11.2017

Index : Yes/No.
Internet : Yes
Speaking/Non-speaking order

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To

The Chairperson,
Sales Tax Appellate Tribunal
Chennai.

S.MANIKUMAR, J.
AND
R.SURESH KUMAR, J.

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