BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.09.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD)No.17146 of 2017

SMS Limited,
Represented by its Authorized Signatory,
C.Gnanamurugan,
Plot No.24, Thangam Colony,
7th Main Street, K.T.C. Nagar,
Tirunelveli-627 011. ... Petitioner

Vs.

Assistant Commissioner (CT),
Palayamkottai Assessment Circle,
Commercial Taxes Building,
Reserved Line Road,
Tirunelveli-627 002. ... Respondent

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondent to dispose of the rectification petition dated 07.08.2017 filed under Sec.9(2) of the CST Act, 1956 read with Section 84 of the TNVAT Act, 2006 pending before the respondent for the year CST 2015-2016.

For Petitioner : Mr.N.Murali
For Respondent : Mr.R.Karthikeyan
Additional Government Pleader

ORDER

By the consent of both sides, these writ petitions themselves are taken up for final disposal.

2.The petitioner is a registered dealer on the file of the respondent / Assistant Commissioner (CT), Palayamkottai Assessment Circle, Tirunelveli and also a works contractor. The petitioner has effected In-transit sales under Section 6(2) of the CST Act, 1956 and claimed exemption in their monthly returns for the amount of Rs.71,37,01,131/- (Rupees Seventy One Crore Thirty Seven Lakhs One Thousand One Hundred and Thirty One only) for the year 2015 - 2016.

3.The respondent passed the final Assessment order dated 15.05.2017, levying tax at the rate of 5% on the entire In-transit sales turnover and demanded tax amount of Rs.3,56,85,056/- for non-submission of E-1 and C-Declaration forms. Though, the entire sales turnover of In-transit sales is made to the Tamil Nadu Generation and Development Corporation (TANGEDCO), the TANGEDCO had failed to issue the C-Declaration form to the petitioner in order to claim exemption before the respondent. In the absence of the C-Declaration form, the respondent assessed the tax at the rate of 5%. Had the TANGEDCO issued the C-Declaration form, the turnover would have been properly assessed by the respondent.

4.However, the petitioner approached this Court for issuance of C-Declaration form vide W.M.P.(MD)No.8359 of 2017 in W.P.(MD) No.10926 of 2017. This Court by order dated 13.06.2017, directed the TANGEDCO to issue the C-Declaration forms. After receiving the same, the rectification application dated 07.08.2017, has been filed by the petitioner under Sec.9 (2) of the CST Act, 1956 read with Section 84 of the TANVAT Act. But till date, the same has not been considered. Hence, the petitioner is before this Court with the present writ petition.

5.Mr.R.Karthikeyan, learned Additional Government Pleader, who takes notice for the respondent, submitted that the C-Declaration form filed was not made available to the respondent at the time of passing the assessment order. He further submitted that the said application can now be considered on merits.

6.Recording the statement made by the learned Additional Government Pleader, the respondent is hereby directed to consider the pending representation of the petitioner on merits and in accordance with law within a period of four weeks from the date of receipt of copy of this order.

7.The writ petition is disposed of with the above direction. No costs.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To
Assistant Commissioner (CT),
Palayamkottai Assessment Circle,
Commercial Taxes Building,
Reserved Line Road,
Tirunelveli-627002.
+1cc to THE SPECIAL GOVERNMENT PLEADER in SR. No. 78878
+1cc to Mr.M.MURALI Advocate in SR. No. 78183
MRN/MR
JS/SKN.RSK/SAR.2/19.09.2017/2P-4C

W.P.(MD)No.17146 of 2017
12.09.2017