IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE T.RAVINDRAN

Tax Case (Revision) Nos.19 to 22 of 2018

M/s East Coast Bearings
No.1, Natesan Nagar,
Villianur Road,
Puducherry 605 005. ..Petitioner in all cases

Vs.

Commercial Tax Officer II,
Puducherry. ..Respondent in all cases

Prayer in all cases: Tax Cases (Revision) filed under C Rule (40)(1)(a) to revise the common judgement of the Sales Tax Appellate Tribunal, Puducherry, dated 29.11.2017, made in Tax Appeal Nos.10 to 13 of 2016. Against the inpugned order of the Appellate Assistant Commissioner(CT), Commercial Taxes Department, Puducherry in Appeal Nos.16 to 19/CST/2015-16/AAC dated 18/09/2015, confirming the order of the Commercial Tax Officer-II, Puducherry dated 02.06.2015 for the assessment years 2007-2008,2008-2009,2009-2010 and 2010-2011 under respective, under the central sales Tax Act, in Assessment No.CST:34230003586

For Petitioner in all cases : Mr.T.Pramodkumar Chopda

For Respondent in all cases : Mr.J.Kumaran, G.A.(Pondy)

C O M M O N O R D E R
(Order of this Court was made by S.MANIKUMAR, J.)

Tax Case Revision Nos.19 to 22 of 2018, are filed, against the common judgement, dated 29.11.2017, made in Tax Appeal Nos.10 to 13 of 2016, by the Sales Tax Appellate Tribunal, Puducherry.

2. As instant Tax Case Revisions have been preferred on the same set of facts, submissions being common, they are taken up together and disposed of by means of this common order.

3. Tax Case Revision Petitions have been filed, on the following question of law:

> Whether on facts and circumstances of the case, the Appellate Tribunal is correct in law in confirming higher rate of tax on interstate sale covered by C Forms, uploaded in the website of the department and produced before the authorities below contrary to the provisions of CST Act and principles laid down in the case of Arulmurugan and Company reported in 51 STC 381 (FB) ?

4. Brief facts, leading to the revisions, are as follows:

(i) Petitioner, M/s.East Coast Bearings, a dealer of bearings, is having its business place at No.1, Natesan Nagar, Villianur Road, Puducherry. Petitioner is a registered dealer and an assessee in the books of Commercial Tax Officer-II, Puducherry, under the Puducherry Value Added Tax Act, 2007 (Act No.9 of 2007) and Central Sales Tax Act, 1956 with TIN/CST Registration No.34230003586.

(ii) For the period from July, 2007 to March, 2008, the petitioner had effected interstate sales against Form-C for the value of Rs.57,51,534/- and effected stock transfer of goods to other States against Form-F to the tune of Rs.10,62,750/- and since the dealer had not produced the Forms-C/F, declarations for the concessions in time, the Assessing Authority assessed the tax due on the total interstate sales turnover reported at Rs.2,72,571, out of which, the petitioner had paid a tax of Rs.1,72,226/- and has to pay a balance tax of Rs.1,00,345/- as per the details of the taxable turnover determined as below:

Inter-State sale of bearings supported by Form-C taxable @ 3%	:	Rs.45,55,404/-
Inter-State sale of bearing not supported by Form-C taxable @ 4%	:	Rs.11,96,130/-
Stock Transfer of bearing not supported by Form-F taxable @ 4%	:	Rs.10,62,750/-
Total & Taxable Turnover determined	:	Rs.68,14,284/-

Therefore, the balance tax due was determined at Rs.54,791/-, out of the total due determined at Rs.2,27,017/- by the Assessing Authority and accordingly, passed the assessment order on 02.06.2015 and sent a Notice in Form-3 to the petitioner for remittance of the same.

(iii) For the period from April, 2008 to March, 2009, the petitioner had effected interstate sales against Form-C for the value of Rs.57,64,430/- and effected stock transfer of goods to other States against Form-F to the tune of Rs.18,56,684/- and since the dealer had not produced the Forms-C/F, declarations for the concessions in time, the Assessing Authority assessed the tax due on the total interstate sales turnover reported at Rs.3,40,469/-, out of which, the petitioner had paid a tax of Rs.1,60,334/- and has to pay a balance tax of Rs.1,80,135/- as per the details of the taxable turnover determined as below:

Inter-State sale of bearing taxable @ 4%	:	Rs.8,90,610/-
Inter-State sale of bearings supported by Form-C taxable @ 2%	:	Rs.51,50,305/-
Inter-State sale of bearings not supported by Form-C taxable @ 4%	:	Rs.6,14,125/-
Stock Transfer of bearings not supported by Form-F taxable @ 4%	:	Rs.18,56,684/-
Total & Taxable Turnover determined	:	Rs.85,11,724/-

Therefore, the balance tax due was determined at Rs.77,129/-, out of the total due determined at Rs.2,37,463/- by the Assessing Authority and accordingly, passed the assessment order on 02.06.2015 and sent a Notice in Form-3 to the petitioner for remittance of the same.

(iv) For the period from April, 2009 to March, 2010, the petitioner had effected interstate sales against Form-C for the value of Rs.79,96,131/- and effected stock transfer of goods to other States against Form-F to the tune of Rs.9,44,065/- and since the dealer had not produced the Forms-C/F, declarations for the concessions in time, the Assessing Authority assessed the tax due on the total interstate sales turnover reported at Rs.3,95,003/-, out of which, the petitoner had paid a tax of Rs.1,13,594/- and has to pay a balance tax of Rs.2,81,409/- as per the details of the taxable turnover determined as below:

Inter-State sale of bearings supported by Form-C taxable @ 2%	:	Rs.54,64,816/-
Inter-State sale of bearings not supported by Form-C taxable @ 4%	:	Rs.10,14,347/-
Stock Transfer of bearings not supported by Form-F taxable @ 4%	:	Rs.33,95,923/-
Total & Taxable Turnover determined	:	Rs.98,75,086/-

Therefore, the balance tax due was determined at Rs.1,54,547/-, out of the total due determined at Rs.2,85,707/- by the Assessing Authority and accordingly, passed the assessment order on 02.06.2015 and sent a Notice in Form-3 to the petitioner for remittance of the same.

(v) For the period from April, 2010 to March, 2011, the petitioner had effected interstate sales against Form-C for the value of Rs.79,96,131/- and effected stock transfer of goods to other States against Form-F to the tune of Rs.9,44,065/- and since the dealer had not produced the Forms-C/F, declarations for the concessions in time, the Assessing Authority assessed the tax due on the total interstate sales turnover reported at Rs.3,94,194/-, out of which, the petitioner had paid a tax of Rs.1,96,530/- and has to pay a balance tax of Rs.1,97,665/- as per the details of the taxable turnover determined as below:

Inter-State sale of bearing taxable @ 4%	:	Rs.9,14,670/-
Inter-State sale of bearings supported by Form-C taxable @ 2%	:	Rs.52,43,554/-
Inter-State sale of bearings not supported by Form-C taxable @ 4%	:	Rs.27,52,577/-
Stock Transfer of bearings not supported by Form-F taxable @ 4%	:	Rs.9,44,065/-
Total & Taxable Turnover determined	:	Rs.98,54,866/-

Therefore, the balance tax due was determined at Rs.92,794/-, out of the total due determined at Rs.2,89,324/- by the Assessing Authority and accordingly, passed the assessment order on 02.06.2015 and sent a Notice in Form-3 to the petitioner for remittance of the same.

(vi) Aggrieved over the assessment orders, dated 02.06.2015, passed by the Commercial Tax Officer-II, Puducherry, under the Central Sales Tax Act, 1956, disallowing the turnover claimed at concessional rate/exemption and taxed the turnover @ 4% for the assessment years 2007-08 to 2010-11 and 2001-12 to 2013-14, as interstate sale without declaration forms, the petitioner herein, filed appeals before the Appellate Assistant Commissioner (CT), Commercial Taxes Department, Puducherry (hereinafter referred to as "The Appellate Authority") in Appeal Nos.16, 17, 18, 19, 20, 21 & 22/CST/2015-16/AAC, contending that the Assessing Officer, without accepting the declaration forms, which were produced, at the time of hearing and without considering, the uploaded declaration forms, has passed the Assessment orders.

(vii) The Appellate Authority passed two separate common orders dated 18.09.2015, for assessment years 2007-08 to 2010-11 and 2001-12 to 2013-14 respectively.

(a) For the assessment years 2007-08 to 2010-11, Appellate Authority, in Appeal Nos.16, 17, 18 & 19/CST/2015-16/AAC, vide common order, dated 18.09.2015, dismissed the appeals. At paragraphs 14 to 16, the Appellate Authority, held as follows:

"14. Coming to the fact of the case on

hand, the assessment related to the years 2007-08, 2008-09, 2009-10 and 2010-11 and these cases have been taken by the A.O. in the year 2015 thereby allowing five to seven years time to comply all requirements including collection of 'Form C/F'. After five to seven years, the appellant is seeking further time on the plea that the representatives are deputed to various places to obtain the 'Form C/F' from various customers. This cannot be accepted as the reason that the submission of Form-C was beyond the control of the appellant. The A.R. has not submitted any proof in support of his statement and without establishing a fact, seeking mercy is of no avail. Considering the present fact of the case and as the A.O. has given ample opportunities nearly five to seven years to produce the C-Form declaration, I hereby refuse to accept the reasons mentioned by the A.R. and the request to give time to submit the forms as ample opportunities were given by the A.O. and the appellant assessee not able to submit / upload the declaration forms till the time of issue of assessment order / till the time of filing of the appeals. The declaration 'Forms C/F' produced for the years 2007-08, 2008-09, 2009-10 and 2010-11 during the time of hearing held on 16.09.2015 were not accepted by the A.O. as the appellant submitted the same after 5 to 7 years of time and that too at the time of hearing only. The view of A.O. is accepted.

15. Consequent to the discussion aforesaid, the proceedings in CST No.34230003586/2007-08 dated 02.06.2015, CST No.34230003586/2008-09 dated 02.06.2015, CST No.34230003586/2009-10 dated 02.06.2015, CST No.34230003586/2010-11 dated 02.06.2015 are hereby confirmed.

16. In view of the above, the appeals are dismissed."

(b) But, for the assessment years 2011-12 to 2013-14, the Appellate Authority, in Appeal Nos.20, 21 & 22/CST/2015-16/AAC, vide common order dated 18.09.2015, allowed the appeals. At paragraphs 14 to 18, the Appellate Authority, held as follows:

"14. Coming to the fact of the case on

hand, the assessment related to the years 2011-12, 2012-13 and 2013-14 and have been taken by the A.O. in the year 2015 thereby allowing nearly three years time to comply all requirements including collection of C-Form. The appellant after contacting the customers regularly for the receipt of declaration Forms, received the same only after issue of assessment orders on 02.06.2015 and immediately uploaded the same through on line. The A.R. submitted copies of the correspondence to show what are the actions initiated by the appellant company to obtain the Form 'C' from the concerned customers. As per the discussions above, I conclude the case by accepting the C-Forms produced at the appellate stage.

15. The appellant along with the appeal memorandum filed the declaration Forms 'C/F' for the inter-state sales made/stock transfer effected for the years 2011-12, 2012-13 and 2013-14 as mentioned in the Annexure of this Order.

16. The A.O. verified the Forms and found no defect and accepted the same.

17. The said declaration Forms 'C/F' are hereby forwarded to the A.O. with a direction to verify and accept the declaration Forms submitted by the appellant-assessee and to revise the assessment order, as per the turnover mentioned in para 15 supra.

18. In view of the above discussions and as the appellant submitted the declarations for the inter-state transactions made to the registered dealers under CST Act, 1956, the appeals are allowed by setting aside the impugned assessment orders dated 02.06.2015 for the years 2011-12, 2012-13 and 2013-14 under CST Act and remanded back to the A.O. for reassessment with direction to entertain the declaration Forms 'C/F' produced in the appeal and to revise the assessment orders as per the provisions of the CST Act.”

(viii) Aggrieved by the common order passed by the Appellate Authority in Appeal Nos.16, 17, 18 & 19/CST/2015-16/AAC, dated

18.09.2015, dismissing the appeals and confirming the assessment proceedings dated 02.06.2015, for the assessment years, 2007-08 to 2010-11, the petitioner herein, filed appeals before the Sales Tax Appellate Tribunal, Puducherry (hereinafter referred to as "The Tribunal") in T.A.Nos.10, 11, 12 & 13 of 2016.

(ix) The Tribunal, vide Common Judgement, dated 29.11.2017, dismissed all the appeals, filed by the petitioner herein. At paragraphs 7 to 15, the Tribunal, held as follows:

> "7. Upon perusing the pleadings, documents and hearing of arguments on both sides, the only point for determination is -
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> Whether the Common Order passed by the Appellate Assistant Commissioner (CT), Puducherry in Appeal Nos.16,17,18 & 19/CST/2015-16/AAC, dt.18.9.2015 confirming the Order of the Commercial Tax Officer-II, Puducherry for the assessment years 2007-2008, 2008-2009, 2009- 2010 & 2010-2011 are just and legal?
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> 8. POINT:
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> These appeals have been preferred against the common order passed in Appeal Nos.16,17,18 & 19/CST/2015-16/AAC, dated 18.9.2015, wherein the present appellant has filed those appeals as against the Assessment Order passed by the authorities for the assessment year 2007-2008, 2008-2009, 2009-2010 and 2010-2011. As against the order passed by the Assessing Authority, appeals have been preferred before the 1st Appellate Authority and the 1st Appellate Authority has dismissed all the appeals. As against the dismissal order, the present appeals have been preferred since all the appeals are arising out of common judgment, this authority is also heard together and passed the common Judgment.
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> 9. The appellant's contention is that he is the dealer of bearings, having its business place at No.1, Villianur Main Road, Natesan Nagar, Puducherry and he is a registered dealer and an assessee in the books of Commercial Tax Officer-II, Puducherry under Puducherry Value Added Tax Act, 2007 (Act No.9 of 2007) and the Central Sales Tax Act, 1956 with TIN/CST Registration No.34230003586. As per the Central Sales Tax Act, every dealer should who makes inter state sale to a registered

dealer, shall pay the tax at the concessional rate provided they produce Form-C Declarations obtained from the prescribed authority of purchasing dealer at the time of assessment. Further as per Rule 12(7) of the CST Rules, 1957, to avail the concessional rate of tax, the dealer has to submit the Declaration Forms in Form-C to the prescribed authority or Assessing Officer within 3 months after the end of the period to which the Declaration or Certificate relates. This appellant filed the returns for the Assessment Year 2007-2008, 2008-2009, 2009-2010 and 2010-201 and the same were admitted by the authorities. The appellant produced the statutory declaration Forms C and F at the time of hearing. But the 1st appellate authority has not considered the same and refused to receive the said forms. Due to the reason beyond control and non availability of statutory declaration forms, the declaration forms could not be submitted at the time of assessment proceedings. In fact, the appellant requested the Assessing Officer to grant further time to obtain the balance forms but the same was declined. According to law, the filing of declaration forms is permissible even after passing of the assessment order and such being the case, the appellate authority ought to have considered the Declaration Forms. Therefore the Orders of the Appellate Authority have to be set aside and the appeals have to be allowed.

10. The respondent's contention is that already sufficient chances given to the appellant but he has not availed of those opportunities at the time of assessing the tax before the concerned authority and there is no valid grounds stated by the appellant before the 1st Appellate Authority to entertain the Declaration Forms as per Rule 12(7) of the CST Rule 1957 and the time limit is three months after the end of the period to which the Declaration or Certificate relates. Failure to file Declaration Forms within the prescribed time will make the dealer liable to pay tax at the scheduled rates applicable to the goods

inside the Union Territory of Puducherry. After scrutinising the returns filed by the appellant, it was found that the appellant had effected interstate sales and stock transfer of goods to other States. In order to avail the concession against the interstate sales transfer, the appellant ought to have filed Declaration in Form-C/F for the years on or before 30.6.2008, 30.6.2009, 30.6.2010 and 30.6.2011 respectively. Thereafter summons were issued to the appellant on 8.2.2011 and 5.3.2011 for the assessment years 2007-2008, 2008-2009, 2009-2010 and 2010-2011, with a direction to produce relevant documents for completion of assessment. However, the appellant has not responded and submitted the requirement forms. Therefore, further notices were issued on 23.2.2015 and directed to file his objections if any on or before 9.3.2015. In response to that notice, the appellant has filed certain amounts of declaration forms and not furnished any satisfactory explanation for non-submission for declaration forms. Eventhough sufficient time was given for furnishing the declaration forms, but till date or finalising the Assessment Order, the appellant has not furnished the required declaration forms for claiming concession. Therefore the Assessing Authority has finalised the assessment according to law. The 1st Appellate Authority has passed a reasonable order and there is no necessity to interfere with the order of the 1st Appellate Authority.

11. In these cases, there is no dispute that the Assessing Authority had given an opportunity to the appellant for production of Form-C/F declarations for claiming concession. The appellant himself admitted that notices given to him but even after the appellant has not filed any prescribed forms to the concerned authority. Thereafter the authorities have proceeded further. As against the levy of tax, the appellant has preferred the 1st appeal before the concerned authority and the said authority has declined to receive the forms from the appellant for the reason that there is no

valid reason stated by the appellant for non-production of Form-C/F within time. However, the 1st Appellate Authority admitted that he has power to receive the documents later if the appellant offered sufficient cause for non-production of declaration forms. But he refused to accept the reasons stated by the appellant. Therefore, now the main point is, whether the reason stated by the appellant are acceptable one has to be decided.

12. On careful perusal of the documents, it is also observed that the appellant has nowhere stated valid reasons for non-submission of Form-C/F declarations. It is well settled law that the appellate authority has power to receive the documents viz., Form-C/F, as per the Judgments of the Hon'ble High Courts as well as the Apex Court. However, the appellant has to state valid reasons for non-submission of the so called documents within the time. In the cases on hand, the assessment years are pertaining to 2007-2008, 2008-2009, 2009-2010, and 2010-2011. It is the bounden duty of the appellant to submit the Form-C/F declarations within the stipulated time, but in the cases on hand, the appellant has failed to submit the Form-C/F declarations within the time, that too, for the past 5 to 7 years, the appellant has not submitted the forms before the concerned authority as required by law.

13. On further careful perusal of the demand notice issued by the Commercial Tax Officer-II, Puducherry, they reveal that for some of value, the appellant had submitted the Form-C/F declarations and that too only after issuance of the demand notice by the Commercial Tax Officer-II, Puducherry. After issuance of the notice only, the appellant had filed some Form-C/F declarations for some amount and they failed to submit for the remaining amount of the concession availed under Form-C/F declaration. Then the Commercial Tax Officer had given sufficient chances to pay the balance tax due, even after that, the appellant had not availed the opportunity before the lower authority.

If it is so, the appellant on his own negligence failed to avail the opportunity. Now, the appellant has filed copies of some Form-C/F declarations stating that they are ready to submit the forms, but however, the appellant has to state valid reasons for non-submission of the so called Form-C/F declarations. The Learned Counsel for the appellant has argued that the appellate court is having power to receive the documents which are filed at appellate stage and the same may be received. But on perusal of records, it is observed that the appellant has not filed any application to receive the additional evidence. Further, the Learned Counsel for the appellant has relied the Judgments reported in -

1. State of Tamil Nadu Vs. Arulmurugan & Company - 51 STC 381 (Mad.)

2. Vispro Foundry Engineers Limited Vs. CTO - 81 STC 169 (Mad.)

3. State of A.P Vs. Hyderabad Asbestos Cements Production Limited - 94 STC 410 (SC)

4. Sree Amman Sprockets and another Vs. CTO - 30 VST 260 (Mad)

5. Vasanthi Automobiles Vs. CTO-II, Puducherry - 43 VST 142 (Mad.)

6. Pandi Devi Oil Private Ltd. Vs. Addl. DCTO (1AC), Pondicherry - 90 VST 297 (Mad.)

7 MRF Ltd., Vs. CTO (1AC-I), Puducherry- W.P. No.7260/2015

8. Lucas Indian Service Limited Vs. CTO-I, Puducherry - W.P. No.6876/2015.

14. On careful reading of the said Judgments, they reveal that 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, if on sufficient cause the petitioner satisfies the requirements of law, then the claim cannot be rejected merely on the ground of belated submission of statutory forms and belated Form-C would be furnished even before the Appellate Authority on showing good and sufficient reason for failure to furnish Form-C. The above said case laws will not be applicable to the present facts of the case,

> because, in the case on hand, the appellant has not even stated the valid reasons for non-submission of form within time and already ample chances given to the appellant but he failed to avail those opportunities.
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> 15. Considering the assessment years and the demand notices and considering the other aspects, this Court is of opinion that the appellant failed to avail the opportunities given to them by the lower authorities and now without any valid reasons, they have produced copies of Form-C/F declarations before this authority. Since no sound reasons stated by the appellant to receive the documents, it is not appropriate to consider the appellant's contention. The authority below has also elaborately discussed and assessed the tax with the available records. Therefore, there is no fault on the side of the tax assessing authority. As far as the 1st appellate authority is concerned, the contention of the appellant is that, he has not considered the contention of the appellant and that they are even now ready to submit the Form-C/F declarations, but the appellant has not stated any valid reasons thereby the orders passed by the authority below and the 1st appellate authority are within the ambit of law and there is no infirmities found on the order passed by the 1st appellate authority thereby this authority has no warrant to interfere in the order of the 1st appellate authority. Therefore, this Court is of opinion that the appeals filed by the appellant have no merits at all and deserves to be dismissed. The Point is answered accordingly."

5. Aggrieved by the Common Judgement of the Tribunal dated 29.11.2017, petitioner has filed the instant Tax Case (Revision) Nos.19 to 22 of 2018, before this Court, on the following grounds:

(i) That the Tribunal, has erred in confirming a higher rate of tax at 4% instead of 3%, on interstate sale covered by valid C Form and levied tax instead of exemption on stock transfer covered by valid Form F and uploaded in the website of the department and produced before the concerned authorities.

(ii) That the Tribunal, ought to have seen that due to reason beyond the control of the petitioner, it could not produce the balance declaration forms and on receipt of the same, the declaration forms were uploaded in the website of the department.

(iii) That the Tribunal, ought to have seen that as per the provisions of the Act and principles laid down by this Court and the Hon'ble Supreme Court, the assessing officer ought to have accepted the declaration forms uploaded / produced and granted concessional rate of tax on interstate sale or exemption on stock transfer as the case may be by reopening the assessment.

(iv) That the Tribunal, ought to have held that the appellate authority being a quasi judicial authority, should have considered the declaration forms uploaded in the website of the department and produced at the time of hearing of the appeal, on merits and in the interest of justice, ought to have granted concessional rate of tax or exemption as the case may be in respect of the turnover covered by declaration forms.

(v) That the Tribunal, ought to have held that the appellate authority erred in not considering the declaration forms uploaded and produced at the time of hearing and dismissing the appeals.

(vi) That the Tribunal, ought to have held that as per the provisions of the Act and principles laid down by this Court and the Hon'ble Supreme Court, the filing/furnishing of declaration form is permissible even after passing of the assessment order and therefore the appellate authority erred in summarily dismissing the appeals that too based on the reasoning of the assessing officer.

(vii) That the Tribunal, ought to have seen that as per the principles laid down in the case of Arul Murugan and Company reported in 51 STC 381 (FB), the appeal proceedings is a continuation of assessment proceedings and therefore the appellate authority can enter the arena of assessment and consider the declaration forms uploaded and furnished / produced on merits as per the provisions of the Act.

(viii) That the Tribunal, erred in not considering the declaration Forms already submitted on the ground that the lower authorities are within their power not to accept belated submission of declaration Forms, contrary to the principles laid down by the Constitutional Bench in the case of State of Himachal Pradesh and others Vs. Ambuja Cements reported in 143 STC 1 (SC) and several decisions of this Court.

(ix) That the Tribunal, ought to have seen that the Assessing Officer has taken up the assessment at a stretch for seven assessment years viz., assessment years 2007-08 to 2013-14 and major portion of declaration Forms were filed in the course of assessment proceedings and therefore the Assessing Officer should have granted sufficient time to furnish the balance declaration forms instead of passing the assessment order in violation of principles of natural justice and fair play.

(x) That the Tribunal, ought to have seen that the petitioner filed appeals against all the assessment orders for assessment years 2007-08 to 2013-14 and the appellate authority had accepted the declaration forms uploaded and produced at the time of hearing of the appeals for the assessment years 2011-12 to 2013-14 and set aside the assessment order and remanded back to the assessing officer for re-assessment with a direction to entertain the declaration forms and revise the assessment order vide common order in Appeal Nos.20, 21 and 22/CST/2015-16/AAC, dated 18.09.2015, but erred in dismissing the appeals for assessment years 2007-08 to 2010-11 on flimsy and erroneous ground.

(xi) That the Tribunal, ought to have seen that the department having accepted the appeal order setting aside the assessment order and remanding for reassessment for assessment years 2011-12 to 2013-14, ought to have allowed the appeals and set aside the appeal order in Appeal Nos.16, 17, 18 and 19/CST/2015-16/AAC dated 18.09.2015 and consequently set aside the assessment order for the Assessment Year 2007-08 to 2010-11 and remanded the matter back for re-assessment with a direction to entertain the declaration forms and revise the assessment orders instead of summarily dismissing the appeals.

(xii) Placing reliance on the Division Bench judgement of this Court in M/s.K.S.B.Pumps Ltd., v. State of Tamil Nadu [TCR.No.87 of 2015, dated 30.09.2015] and Vista Security Technics Pvt. Ltd., v. The State of Puducherry [TCR.Nos.51 to 57 of 2015, dated 08.07.2015], learned counsel for the petitioner submitted that Courts have consistently held that when C-Form Declaration is submitted, even before the Appellate Tribunal, the same has to be accepted and accordingly, assessment has to be made. He further submitted that all the authorities have failed to consider that sufficient cause was shown for non-compliance.

(xiii) Learned counsel also placed before the Court the e-mail sent on various dates to various purchasers requesting them to sent C-Form at the earliest.

6. Per contra, justifying the order of Tribunal, Mr.J.Kumaran, learned counsel for the respondent, submitted that as per the mandatory requirement of Rule 12 in Sub-Rule 7 of CST (Registration and Turnover) Third Amendment Rules, 2005 and

proviso therein, the declaration Forms for the interstate sales ought to be submitted for all the quarters within three months after the end of the period to which the declaration relates. But, the petitioner had not complied with the mandatory provision and failed to submit the same even at the time of finalisation of assessment for the said years until 02nd June, 2015 i.e. after a period of 5 to 7 years. As such, the assessment was completed as per the provision of the CST (Registration & Turnover) Rules, and prayed for dismissal of the instant Tax Case Revisions. He also submitted that in respect of appeals filed for the assessment years 2011-12 to 2013-14, proof was filed during course of hearing of the said appeals, and for the assessment years 2007-08 to 2010-11, sufficient cause for not producing the 'C' form declaration before the Assessing Officer was not produced and hence the appellate authority dismissed the appeal.

7. Heard the learned counsel appearing for the parties and perused the materials available on record.

8. Though returns were submitted for the assessment years 2007-08 to 2010-11, the department has taken eight years to finalise the assessment for year 2007-08. No reasons have been assigned for the delay in passing assessment orders, within the financial year.

9. To ascertain the cause shown in the appeals for not producing the 'C' form declarations for the assessment years 2007-08 to 2010-11, we directed the learned counsel for the petitioner to produce the appeal memorandums filed before the appellate authority.

10. In all the appeal memorandums for the assessment years 2007-08 to 2010-11, the revision petitioner / appellant therein, has stated the same reason that 'C' form declarations could not be produced. For brevity, the cause shown is reproduced:

> "3. The Assessing Authority failed to appreciate the fact that there is no culpable delay on the part of the Appellants in submitting the declaration Forms and the Assessing Authority is wrong in refusing to accept the physical declaration form which were produced at the time of hearing and went wrong in not considering the declaration forms which were uploaded, in the assessment order."

11. On the contention of the learned counsel for the respondent, that in respect of the assessment years 2011-12 to 2013-14 (proof has been filed) and whereas, it was not done in the case of assessment years 2007-08 to 2010-11, we have perused

the list of documents filed along with all the appeals. They are as hereunder:

"1. Appeal Memorandum - in Duplicate.
2. Original Assessment Order with a copy thereof.
3. Receipt for payment of disputed tax
4. Application for stay collection of disputed tax till the disposal of appeal-in duplicate.
5. Authorisation in favour of the authorised representative."

12. Added further, during the course of the hearing of the instant revision petitions, learned counsel for the petitioner has produced emails sent to the vendors for obtaining 'C' form declarations, and for producing the same before the assessing officer and further submitted that though steps were taken, the dealer could not produce the same. According to the petitioner, though sufficient cause was shown, the appellate authority did not consider the same.

13. Reasons assigned in all the appeals for not providing the 'C' form declarations before the assessing officer is one and the same. When the appellate authority has accepted the said reason, for the assessment years 2011-12 to 2013-14, we are unable to understand as to why the said reason, was not acceptable to the other assessment years also. In the foregoing paragraphs we have already observed that the department has taken 8 years to complete the assessment for the year 2007-08, but has found fault with the dealer, for not producing 'C' declaration forms before the assessing officer. E-mails sent to the vendor are reproduced:

"(1) From: East Cost Bearings (ecbearings@yahoo.co.in)
To: cat@parry.Murugappa.com
cc:VelayuthamT@parry.murugappa.com; KarthickS@parry. murugappa.com; ThangarajuV@parry.murugappa.com;
Date: Saturday, 22 November, 2014, 10.34 AM.
Dear Sir,
Pl. see your below mail where you have mention c form will be couriered in one week time but nothing has come.

NOTE:MR.VELAYUTHAM/MR.KARTHICK, why this delay even you are keeping quite for this issue were you should be also involved, why is delay in issuing c form.
Regards,
Harish

East Coast Bearings."

(2) E-mail dated: 14.11.2014 sent by East Coast Bearings to Centralised Accounting Team - HO-EID cat@parry.murugappa.com

Dear Sir,

Pl. see your below mail where you have mention c form will be couriered in one week time but nothing has come.

NOTE:MR.VELAYUTHAM/MR.KARTHICK. why this delay even you are keeping quite for this issue were you should be also involved.

Regards,

Harish (East Coast Bearings)"

(3) Email dated 30.10.2014, From Centralised Accounting Team-HO-EID to East Coast Bearings:

"Dear sir,

Backlog c form is getting ready and we will be despatching to respective plant within a week. Kindly bear with us.

Thanks & Regards,

Saleem M M (Centralised Accounting Team)"

(4) E-mail dated 30.10.2014 sent from Assistant Manager, Commercial-SUG-EID-HO to Centralised Accounting Team - HO-EID:

Please sort out the issue immediately"

(5) E-mail dated 30.10.2014 sent from East Coast Bearing to Centralised Accounting Team-HO-EID:

"Dear Sir, We are sorry to inform you that till date we have not received the forms. Kindly do the needful. Kindly find the attachment for detail - Thanking you - Jeyesh Bhatt - East Coast Bearings."

(6) E-mail dated 20.10.2014 sent from East Coast Bearings to Centralised Accounting Team-HO-EID:

Dear sir, Kind attn mr.Saleem & Subash, As per the discussion we are forwarding herewith the FOM "C" reminder kindly do the needful. Pl also send contact detail. Thanks - Jayesh Bhatt, East Coast Bearings.

(7) E-mail dated 05.08.2014, sent from

East Coast Bearings to Centralised Accounting Team-HO-EID:

Dear sir, we request you to kindly find the attached file and do the needful to issue the form 'C' at an earliest. For any clarification please call us at any time. Thanking you - Jayesh Bhatt, East Coast Bearings."

(8) E-mail dated 30.09.2014 sent from East Coast Bearings to Centralised Accounting Team - HO - EID :

Dear Sir, Still we have not received c form our last date is 08.10.2014. Then after we have to raise debit note for difference in amount. Pl. reply. Regards - Harish, East Coast Bearings."

(9) E-mail dated 26.09.2014, sent from Centralised Accounting Team-HO-EID to East Coast Bearings:

Dear sir, Yesterday we had issued online c form related to the period (2011-12) and remaining c form we will be issuing shortly (docket no-MAA167111380) fyr. Thanks & Regards - Centralised Accounting Team"

(10) E-mail dated 24.09.2014, sent from East Coast Bearings to Centralised Accounting Team-HO-EID:

Dear Sir, We have not received the c form which we have reminded to several times pl sent us the same immediately to unable us to submit to sales tax authority immediately. Hope the above is clear. Thanks, Haris, East Coast Bearings"

(11) E-mail dated 14.10.2014 sent from East Coast Bearings to Centralised Accounting Team-HO-EID:

Dear sir, Still we have not received c form, our last date was 08.10.2014, which is already over pl let us know what reply we have to give to Commercial Dept by return mail. Then after we have to raise debit note for difference in amount. Pl reply. Regards - Harish, East Coast Bearings."

(12) E-mail dated 30.09.2014 sent from East Coast Bearings to Centralised Accounting Team-HO-EID:

Dear Sir, Still we have not received c form, our last date is 08.10.2014. Then after we have to raise debit note for difference in amount. Pl reply. Regards - Harish, East Coast Bearings."

(13) E-mail dated 27.03.2015, sent from East Cost Bearings to Bayer:

Dear Mr.Sathish, Greetings to you, Please refer to my visit to your office on 25.03.2015 and requested by you for All Invoices Copy from year 2005-2006 to 2013-2014. We have courier all the Invoices yesterday to your Chennai Office. Kindly acknowledge the same and send us the C form by Monday without any further delay. Advance thanks for understanding. Regards, Harish, East Coast Bearings."

(14) E-mail dated 21.03.2015 sent from East Coast Bearings to Bayer:

Dear Sir, Waiting for your reply for address. NOTE: IF WE ARE NOT GETTING C FORM BY MONDAY THEN WE HAVE RAISE DEBIT-NOTE FOR THE SAME AND ALSO OUR LAST DAY TO SUBMIT THE C FORM IS ALREADY OVER. Pl give priority. Regards, Harish, East Coast Bearings."

(15) E-mail dated 18.03.2015, sent from East Coast Bearings to Bayer:

Dear Sir, Pl give your Chennai Office address with Contact No by return mail. We will collect the same today. Regards, Harish, East Coast Bearings."

(16) E-mail dated 18.03.2015, sent from s.raghu@bayer.com (Bayer) to bhaskar.bhupathi@bayer.com (Bayer):

Dear Bhaskar / Satish, This supplier is chasing us for "C" Form for the past three months. Kindly do the needful on priority and confirm. Thanks, S.Raghu, Bayer."

(17) E-mail dated 17.03.2015, sent from East Coast Bearings to Bayer:

Dear Sir, As per our discussion, we have not yet received the forms from your end, as per the attached file. All most from the past three months we are following with you for the same but till date we have note recd any thing from you. Kindly release the same by today's courier, failing which we will be force to collect the difference of tax from you. Thanking you, Jayesh Bhatt-East Coast Bearings."

(18) E-mail dated 26.09.2014, sent from East Coast Bearings to Bayer:

Dear Sir, We request you to kindly find the attached file & do the needful to send the "C" form as per attached file. Thanking you, Jayesh Bhatt, East Coast Bearings."

(19) E-mail dated 18.03.2015, sent from East Coast Bearings to Bayer:

Dear Sir, Pl. give your Chennai office address with Contact No by return mail. We will collect the same today. Regards, Harish, East Coast Bearings."

14. Perusal of the e-mails show that the petitioner has taken efforts to obtain 'C' declaration forms from the vendors. E-mails produced shall form part of the record.

15. Relevant provisions from the Central Sales Tax (Pondicherry) Rules, 1967; Central Sales Tax Act, 1956; and Central Sales Tax (Registration and Turnover) Rules, 1957, Central Sales Tax (Pondicherry) Rules, 1967, requires for the purpose of these revisions are as follows:

Central Sales Tax (Pondicherry) Rules, 1967:

"5(1). Every dealer other than those specified in the proviso to Rule 11 of the Central Sales Tax (Registration and Turnover) Rules, 1957, registered under section 7 of the Act, shall submit a return of his transactions in the course of interstate trade or commerce or in the course of export of the goods out of the Territory of India in Form 1 together with the connected declaration form or duplicate of such form where the original has been lost and the certificates in Forms D, E-I and E-II so as to reach the assessing authority on or before the 25th of each month showing the turnover for the preceding month and the amount or amounts collected by way of tax together with a challan or a crossed cheque in favour of the assessing authority for the payment of tax due thereon under the Act."

Central Sales Tax Act, 1956:

"8(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."

Central Sales Tax (Registration and Turnover) Rules, 1957:-

"12(7). The declaration in Form C or Form F or the certificate in Form E-I or Form E-II shall be furnished to the prescribed authority with in 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 with in the aforesaid time, that authority may allow such declaration or certificate to be furnished within such further time as that authority may permit."

16. In State of Tamil Nadu v. Arul Murugan reported in 51 STC 381, a Full Bench of this Court, while dealing with the power of the Appellate Authority, to receive C-Form Declarations, held as follows:

"We hold that the Tribunal has the power to receive C forms at the time of the appeal, for sufficient cause. The Tribunal can then proceed to the next step of applying the concessional rate of tax to the turnover covered by the C forms. Or, the Tribunal may remand the case to the Appellate Assistant Commissioner. The remand may be for the specific purpose of going into the question of sufficient cause. The remand may also be loaded with a finding by the Tribunal that there has been sufficient cause, leaving the scrutiny of the C forms

> alone to be undertaken on remand. The Tribunal may, if satisfied about the sufficient cause set aside even the assessment order, and direct the assessing authority to re-do the assessment, in which event there would be no occasion for the assessing authority to go into any question of "delay" in filing the C forms, for with the setting aside of the assessment the whole thing is once again at large."

The above said decision has been confirmed by the Hon'ble Supreme Court in State of Andhra Pradesh vs. Hyderabad Asbestos Cement Production Ltd., [(1994) 94 STC 410].

17. In the case of State of H.P., and others v. Gujarat Ambuja Cement Ltd., and another reported in 142 STC 1 (SC), the Hon'ble Supreme Court while dealing with belated filing of statutory forms, held as follows:

> "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 and Press Works Ltd., v. Commercial Tax Officer [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."

18. In Vista Security Technics Pvt. Ltd., v. State of Puducherry [Tax Case (Revision) Nos.51 to 57 of 2015], the assessee requested time to produce the statutory declaration forms, viz., Forms-C, F and I. Assessee could not produce the same, before completing the final assessment. Assessment orders were passed, demanding a higher rate of tax, on the ground that the assessee had not produced the necessary statutory declaration forms. Being aggrieved by the same, the assessee preferred appeals before the Appellate Assistant Commissioner. Though statutory declaration forms were produced, the same were not accepted, on the ground that the assessee had not shown any sufficient cause to file the statutory declaration forms belatedly. Therefore, the first Appellate Authority dismissed the appeals. As against the said order, the assessee pursued the matter before the Tribunal, which also resulted in dismissal. Accepting the contention that the first Appellate Authority has powers to receive such documents and following the decisions in State of Tamil Nadu v. Arul Murugan reported in 51 STC 381 and State of H.P., and others v. Gujarat Ambuja Cement Ltd., and another reported in 142 STC 1 (SC), a Hon'ble Division Bench of this Court, at Paragraphs 12 and 13, held as follows:

"12. The ratio in the above-said decision will enure to the benefit of the assessee. It is to be noted that the approach of the Department should be to ensure that what the assessee is rightfully entitled to should be extended to the assessee without harping on technicalities. Accordingly, we are inclined to set aside the orders of the Tribunal and remand the matters back to the Assessing Authority for passing fresh orders.

13. In the result, the impugned orders of the Tribunal stand set aside and the above Tax Case (Revisions) stand allowed. The Assessing Officer is directed to proceed with the assessment after receiving the necessary statutory declarations and complete the assessment on merits. No costs. The petitioners are directed to submit the necessary statutory declaration forms before the Assessing Officer along with a copy of this order."

19. In M/s.K.S.B.Pumps Ltd., v. State of Tamil Nadu [Tax Case (Revision) No.87 of 2015, dated 30.09.2015], C-Form declaration to an extent of Rs.19,98,976/-, was not submitted, for the assessment year 2000-01, within five years from the date of the original assessment order, before the Assessing Officer, as per the circular of the Commissioner. Higher rate of tax was imposed. Being aggrieved by the same, an appeal was filed. Pending appeal, the assessee submitted Form C declaration for a turnover of Rs.40.28 Lakhs, before the Assessing Officer, who accepted the same, and passed a revised order, dated 29.9.2005. Taking note of the same, the first Appellate Authority passed an order, partly allowing the claim and remanding the matter to the Original Authority. The assessee filed a second appeal before the Tamil Nadu Sales Tax Appellate Tribunal and by the time, the entire disputed tax had been paid by the assessee. During the pendency of the second appeal, the assessee obtained Form-C declarations for the balance turnover and offered to produce the same. But the learned counsel for the assessee failed to appear before the Tribunal, resulting in dismissal of the appeal. Application filed for restoration was also dismissed. However, the matter was remitted back to the Tribunal. Again, the Tribunal dismissed the appeal, on the ground that C Form declaration were not produced, within five years from the date of the original assessment order, before the Assessing Officer, as per the circular of the Commissioner.

20. Being aggrieved by the same, the assessee therein filed Tax Case Revision No.87 of 2015. One of the questions of law, framed by this Court was, "whether in the facts and circumstances of the case, the Tribunal is right in not accepting the C declaration forms filed by the appellant, at the time of hearing, by relying on a circular issued by the Commissioner and on the ground that the same were not filed before the Assessing Officer within a period of five years, when a Full Bench of this Court in the judgment reported in 51 STC 381 held that an appeal is a continuation of assessment

proceedings and that the Tribunal has the power to accept the declaration forms?"

21. Following the Full Bench of this Court in State of Tamil Nadu v. Arul Murugan reported in 51 STC 381, a Hon'ble Division Bench of this Court in M/s.K.S.B.Pumps Ltd's case (cited supra), at Paragraph 9, held as follows:

> "9. Insofar as second question is concerned, the issue is covered by a decision of the Full Bench of this Court in State of Tamil Nadu v. Arul Murugan [(1982) 51 STC 381] to the effect that an appeal is a continuation of the assessment proceedings. Therefore, the fact that the petitioner could have filed an application for rectification along with necessary forms would not preclude the assessee from producing them either before the first Appellate Authority or before the second Appellate Authority, provided the forms of declaration are genuine. Therefore, the Tribunal was not right in non suiting the petitioner on the short ground that they ought to have produced the forms before the Assessing Officer within five years, as per the circular of the Commissioner. Hence, the second question is answered in favour of the petitioner/assessee."

22. Though Mr.J.Kumaran, learned counsel for the respondent made submissions justifying the order of the Tribunal, in the light of the above discussion and decisions, we are not inclined to accept the same. On the contra, considering the material on record, we are of the view that sufficient cause has been shown by the revision petitioner.

23. Orders impugned before us are set aside. Tax case revisions are allowed. As in the case of assessment years 2011-12 to 2013-14, the matter is remanded to the Assessing Officer to proceed in accordance with the provisions of the Central Sales Tax Act, substantial question of law is answered in favour of the assessee. No costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

kk

To

1.The Commercial Tax Officer II,
Puducherry.

2.The Sales Tax Appellate Tribunal,
Puducherry.

3.The Appellate Assistant Commissioner(CT)
Commercial Taxes Department, Puducherry.

+1 CC TO MR.T.Pramod kumar chopda, Advocate SR. No.16558

Tax Case (Revision)
Nos.19 to 22 of 2018

GJII(CO)
RMP(02/04/2018)