BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.08.2018

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.(MD)No.18845 of 2018

Tvl.Sri Krishna Enterprises,
Rep. by its proprietor,
K.S.Kannan ... Petitioner

Vs.

The Commercial Tax Officer,
Paramakudi. ... Respondent

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus calling for the records on the file of the respondent in Roc.No.204/2018/A3 dated 27.07.2018, quash the same as violative of the Principles of Natural Justice and direct the respondent to accept the certificates filed by the petitioner on 27.04.2018 along with a petition under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 and revise the petitioner's assessment for the year 2014-15 under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 as per the Law settled by several judgments of this Court and levy tax @ 5% on the petitioner sales to TNEB.

For Petitioner : Mr.A.Chandrasekaran
For Respondent : Mr.R.Murugan, Additional Government Pleader

ORDER

This writ petition has been filed seeking a Writ of Certiorarified Mandamus to quash the impugned notice of the respondent in Roc.No.204/2018/A3, dated 27.07.2018 and to direct the respondent to accept the certificates filed by the petitioner on 27.04.2018 and revise the petitioner's assessment for the year 2014-15, by considering the petition filed by the petitioner under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 (in short 'TNVAT Act').

2. By consent, this writ petition is taken up for final disposal at the stage of admission itself.

3. According to the petitioner, they are a manufacturer of EB line materials and an assessee on the file of the respondent herein, under TNVAT Act. For the assessment year 2014-15, the petitioner reported a total turn over of Rs.1,49,19,301/- and they claimed concessional rate of tax at 5%, for their sale of industrial inputs to Tamil Nadu Electricity Board (in short 'TNEB'), as per the Notification No.II(1)/CTR/12(R-17)/2011, issued in G.O.Ms.No.77, CT & R (B2), dated 11.07.2011. After some rounds of communications between

the petitioner and the respondent, the respondent has passed an assessment order, dated 16.03.2018, raising a sum of Rs.47,749/- as demand payable by the petitioner. In the said assessment order, the respondent has levied 5% tax for Rs.1,42,09,374/- and 14.5% tax for Rs.2,07,300/- & Rs.5,02,627/-, respectively, stating that the petitioner did not produce the certificates from TNEB as proof for their sales for Rs.5,02,627/-.

4. The learned Counsel for the petitioner would submit that the petitioner, on 27.04.2018, after getting the balance certificates from TNEB, has made a request to the respondent to revise the assessment order under Section 84 of TNVAT Act. But, the respondent, by way of the impugned notice, dated 27.07.2018, has declined to entertain the petitioner's request and hence, the present writ petition came to be filed.

5. Heard the learned Counsel appearing for the petitioner and Mr.R.Murugan, learned Additional Government Pleader, who takes notice for the sole respondent.

6. The learned Counsel for the petitioner drew the attention of this Court to the Circular of the Commissioner of Commercial Taxes in Acts Cell-1/12975/2011, dated 28.02.2011, where an instruction was given to the Assessing Officers to accept the forms / certificates produced by the assessee, even after passing final assessment orders and pass revised assessment orders. The relevant portion of the said circular reads thus:

*"Acts Cell - 1/12975/2011 / 28.02.2011*

*CIRCULAR*

*To All Deputy Commissioners:*

*Sub : Tamil Nadu General Sales Tax Act, 1959 - For XVII - Acceptance of - Re-opening assessments - Certain instructions - issued.*

*Ref :1.This office Circular No. Acts Cell-III/23367/93, dt.30.04.1993.*

*2.This office Circular No. Acts Cell-III/69485/98, dt.29.06.1999.*

*3.This office Circular No. Acts Cell-IV/66001/99, dt.08.12.1999.*

*4.This office Circular No. Acts Cell-IV/59758/99, dt.01.02.2000.*

*5.This office Circular No. Acts Cell-IV/41347/2000, dt.10.07.2000.*

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*In the circular first cited, it was instructed that the Assessing Officers should accept the 'C' Forms presented after final assessment and revise the assessment under Section 55 of the Tamil Nadu General Sales Tax Act, 1959 on sufficient cause.*



*In the circular second cited, the instructions were made applicable not only to 'C' forms, but also to E-I, E-II and F* *forms also.*

*In the circular third and fourth cited, the instructions were reiterated and the Assessing Officers were requested that the 'C' and 'F' forms may be issued without mentioning the validity.*

*In the reference 5th cited, the instructions were reiterated and the Assessing Officers were instructed to follow the instructions scrupulously.*

*Despite issue of circulars, several representations are still received in this office that some Assessing Officers are insisting the dealers to prefer appeals and seek legal remedy.*

*The declaration Forms / Certificates have to be accepted on remand by the appellate authorities and only to save the trouble of prolonging the issue, the Assessing Officers were instructed to accept the same and revise the assessments. Hence, all the Assessing Officers may be strictly instructed to accept the C, D, E-I, E-II and F forms, even after passing final assessment orders and to revise the assessments under Section 55 of the Tamil Nadu General Sales Tax Act, 1959.*

*Similarly, representations are received in respect of Form XVII also. The case of Form XVII is similar to C, D, E-I, E-II and F forms, in order to avail concessional rate under Section 3(3) and 3(5) of the Tamil Nadu General Sales Tax Act, 1959, the Form XVII was prescribed under Rule 22(1) of the Tamil Nadu General Sales Tax Rules, 1959.*

*Hence, the benefit available under the Central Sales Tax Act, 1956, is applicable to Form XVII also.*

*All the Assessing Officers may be instructed to accept the Form XVII filed after passing final assessment orders and revise the assessments under Section 55 of the Tamil Nadu General Sales Tax Act, 1959. Form XVII and other Forms should be issued without mentioning any date of validity as in the case of Form 'C' and 'F'.*

*The Assessing Officers may also be instructed to mention in the assessment order itself by a foot note that the dealers may file the missing declaration forms / certificates, as the case may be, and the assessment will be revised under Section 55 of Tamil Nadu General Sales Tax Act, 1959 as and when the Forms like C, D, E-I, E-II, F and Form XVII (as the case may be) are filed by the dealers after final assessment..."*

7. A perusal of the impugned notice, dated 27.07.2018, would show that the respondent, while declining to entertain the petitioner's request, has held as follows:

"*.. In the above circumstance, it is informed that after passing of assessment order by the assessing authority after giving reasonable opportunity, revision of order is not possible, except by the direction of appellate authority (or) legal forum."*



8. When the circular of the Commissioner of Commercial Taxes in

Acts Cell-1/12975/2011, dated 28.02.2011, itself is in very clear terms that the Assessing Officers are empowered to accept the forms / certificates, even after passing final assessment orders and revise the assessments, the act of the respondent in passing the impugned notice could not be countenanced.



9. In such a view of the matter, the impugned notice, dated 27.07.2018, deserves interference and the same is accordingly quashed. The respondent is directed to accept the industrial input certificates filed by the petitioner on 27.04.2018 along with the petition under Section 84 of TNVAT Act and revise the assessment for the assessment year 2014-15, on merits and in accordance with law, after affording due opportunity of hearing to the petitioner, within a period of four weeks from the date of receipt of a copy of this order.

10. With the above observations and directions, this writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS II)

/True Copy/

Sub Assistant Registrar(CS IV)

gk

To
The Commercial Tax Officer, Paramakudi.

1CC TO MR. A. CHANDRASEKARAN, ADVOCATE SR 81208
1CC TO THE SPL GOVT PLEADER SR 81480

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