BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **18.09.2018**

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)Nos.19828 and 19829 of 2018
and
W.M.P.(MD).Nos.17609 and 17610 of 2018

M/s.Tvl.Paramjothi Traders,
rep. by its Proprietor B.Deivendran,
No.16/1, Asaithambi Lane,
Thirumalpuram,
Bodinayakanur. .. Petitioner in both the petitions

Vs.

The Assistant Commissioner (CT),
Bodi Assessment Circle,
Bodinayakanur. .. Respondent in both the petitions

COMMON PRAYER: Writ Petitions have been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondent herein to rectify the order passed in CST.No.137387/2012-13 and CST.No.137387/2013-14, respectively dated 06.01.2015, pursuant to the petitioner's representation and petitions dated 25.01.2015, 27.01.2015, 29.06.2018 and 10.08.2018 filed before the respondent herein under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 and accept the "C" forms filed by the petitioner therein and levy tax @ 2% on the petitioner's inter-state sales of Rs.45,85,920/- and 2,00,70,800/- respectively.

For Petitioner in both the petitions : Mr.A.Chandrasekaran

For respondent in both the petitions : Mr.D.Muruganandham, Addl. Government Pleader

COMMON ORDER

The petitioner is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 and Central Sales Tax Act, 1956 and he has been filing returns regularly. For the assessment years 2012-13 and 2013-14 (CST), the petitioner has reported a total and taxable turnover of Rs.2,26,18,000/- and Rs.4,88,52,175/- respectively in their regular monthly returns and in the said returns, the petitioner claimed concessional rate of tax of 2% on their entire turnover based on inter-state sales against Form "C" declarations and accordingly, paid tax due thereon along with their regular monthly returns. The respondent, after verification of the returns filed by the petitioner, has passed the impugned orders for want of "C" Forms, without issuing any notice or summons, without granting an opportunity of personal hearing and without considering the circular, dated 28.02.2001, issued by the Commissioner of Commercial Taxes. After receipt of "C" Forms from the other State purchasers, the petitioner has filed rectification petitions before the respondent and also sent several representations for passing fresh orders based on the "C" Forms produced by the petitioner. The respondent, without considering the said petitions and representations, initiated recovery proceedings. Therefore, challenging the said assessment orders, the petitioner is before this Court.

2. Heard the learned counsel appearing for both sides and perused the records carefully.

3. A perusal of the impugned orders show that the petitioner was given neither notice nor personal hearing before passing the impugned orders. Further, the respondent did not adhere to the circular issued by the Commissioner of Commercial Taxes, dated 28.02.2001, wherein it has been clearly directed as follows:

> "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 the Tamil Nadu General Sales Tax Act, 1959 as and when the Forms like C, D, EI, E-II, F and Form XVII (as the case may be) are filed by the dealers after final assessment. "

4. The said circular is binding on the respondent. After receipt of "C" forms, the petitioner has submitted a petition, dated 27.01.2015, seeking to accept the same and revise the order. But, the respondent has not considered the same. On 29.06.2018, the petitioner has filed rectification petitions under Section 84 of the TNVAT Act. The said petitions also have not been considered by the respondent. The above circular dated 28.02.2001 clearly obligated the respondent to revise the assessment order, as and when the Forms are filed by the dealers and hence, the respondent ought to have considered the petitions filed by the petitioner and revised the original assessment orders, dated 06.01.2015. As the respondent has miserably failed to revise the orders as per the circular, dated 28.02.2001, this Court is inclined to direct the respondent to consider the rectification petitions filed by the petitioner dated 29.06.2018, along with the relevant Forms and pass appropriate orders.

5. In view of the above, the respondent is directed to consider the rectification petitions filed by the petitioner, dated 29.06.2018, along with the relevant Forms and after providing an opportunity of personal hearing to the petitioner, pass appropriate orders on the same on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order.

6. Both the writ petitions stand disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Protocol)

/True Copy/

Sub Assistant Registrar(CS II)

gcg
To
1.The Assistant Commissioner (CT),
Bodi Assessment Circle, Bodinayakanur.

1CC TO MR. A. CHANDRASEKARAN, ADVOCATE SR 84906
1CC TO THE SPL GOVT PLEADER SR 85610

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Common Order made in
W.P(MD)Nos.19828 and 19829 of 2018

18.09.2018