BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.06.2019

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THE HON'BLE DR.JUSTICE ANITA SUMANTH

W.P(MD).No.20625 of 2013
and
M.P(MD)No.1 of 2013

M/s.Kali BMH Systems(P) Ltd.,
Rep. by its Jt.Mg.Director K.R.Baskar ...Petitioner

Vs.

The Assistant Commissioner (CT) (FAC).,
Kumbakonam IV Asst. Circle,
Kumbakonam,
Thanjavur District. ...Respondent

Prayer : Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for the records of the respondent in his proceedings in CST No. 224093/2012-13 dated 08.08.2013 and consequential demand notice in CST No.224083/2012-2013 dated 27.11.2013 and quash the same as illegal.

For petitioner : Mr.S.Ramanathan

For Respondent : Mr.P.Murugan
Additional Government Pleader

ORDER

The petitioner assails an order of assessment passed in terms of the Central Sales Act, 1956 (In short 'Act') dated 08.08.2013 for the period 2012-2013. The issue relates to the assessment of turnover relating to inter-state sale of industrial inputs amounting to a sum of Rs.27,00,33,733/- at the rate of 14.5% as against 2 % claimed by the petitioner. The assessing authority had brought the entire turn over to tax at the higher rate for the reason that C-Forms were not produced by the petitioner during the proceedings for assessment.

2. Be that as it may, the petitioner has on 23.09.2013, filed an application received by the respondent on 26.07.2013, annexing C-Forms in respect of turnover amounting to Rs.6,65,02,186/- and requested revision of assessment to that extent. Thereafter,

learned counsel for the petitioner submits, that C-Forms were periodically submitted before the assessing officer. On 29.11.2016 a consolidation of all the C-Forms were filed by way of a re-conciliation statement before the assessing officer, along with annexures and the Forms. This submission along with annexures have been received on 01.12.2016 duly acknowledged by the respondent.

3. The short prayer before me is that the assessing officer may be directed to take note of the C-Forms available on record filed after completion of assessment and revise the assessment accordingly.

4. Mr.Murugan, learned Additional Government Pleader appearing on behalf of the respondent has filed a counter and fairly states that he has no objection to the consideration of the C-Forms by the assessing officer and consequent revision of assessment, if any.

5. The petitioner also relies on the Clarification issued by the Commissioner of Commercial taxes dated 29.06.1999 to the effect that the assessing authority will consider C-forms produced after completion of assessment, if the petitioner shows sufficient cause for the delay in submission. The clarification is extracted below:

> *Clarifications/Circulars issued by the Commissioner of Commercial Taxes*
> *1. Acts Cell - III/ 69485 / 98/ 29-06-1999 - Filing of C Forms & E Forms*
> *Assessing Officers were instructed in Acts Cell.III/23267/93 dated 30.04.1993 and D.Dis. Acts Cell. III/97355/93 dated 23.11.1993 to admit 'C' forms even after the final assessments were made and allow the concessional rate provided that the dealer tried his best, but it was beyond his control to get the 'C' Forms. The above circular was issued based on the decision of the Madras High Court in the case of Arul Murugan and Company (51 STC 381) and Vipro Foundry Engineers Limited (81 STS 169) and Supreme Court in the case of Hyderabad Asbestos Cement Productions Limited (94 STS 410).*
> *As per Rule 12(7) of the Central Sales TAX (R & T) Rules, 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 upto the time of assessment by the first assessing authority provided that if the prescribed authority is satisfied that the person concerned was prevented by sufficient cause from furnishing such declaration or certificate within the aforesaid time, that authority may allow such*

declaration or certificate to be furnished within such further time as that authority may permit.
The Deputy Commissioner (CT) Chennai (East) has requested clarification on his view that the conditions laid down for 'C' Forms will be equally applicable to E-I, F and E-II Forms. The time limit to file above Forms are mentioned in the following section of C.ST. Act.
'F' Form - Section 6A(1).
E-I/E-II Form - First Proviso to Section 6(2)
'C' Form - Proviso to Section 8(4).
In all the above sections the declarations/ Certificates are required to be furnished within the prescribed time or within such further time as that authority may for sufficient cause permit. The prescribed time is mentioned in Rule 12(7) of the CST(R & T) Rules for all the above declarations/Certificates. Therefore, what is applicable to 'C' form is also applicable to the other Forms referred in that rule.
In a recent judgment the Madras High Court in the case of Sri Kumaran and Company Vs. Commercial Tax Officer in W.P.No.19750/98 dated 15.12.1998 communicated to all Deputy Commissioners in this office letter No. B1/96698/98 dated 31.05.1999 has held that E-II Forms produced should be accepted even after final assessment under Section 55 of the Act on par with procedure adopted in respect of 'C' Forms on the basis of Madras High Court's judgment in Arul Murugan's case.
Hence it is clarified that the assessing officers can allow 'C'. E-I, E-II and 'F' Forms to be filed after completion of assessment on sufficient cause.

6. In the present case, the explanation offered for the delay is that the petitioner had experienced difficulties in obtaining C-forms from the dealers resident in other States. In fact, even in the course of the assessment proceedings, the petitioner appears to have sought time for production of C-forms, which was not granted by the respondent.

7. In the light of the discussion above, I am of the view that the prayer of the petitioner is liable to be accepted. The impugned assessment is set aside. The petitioner is directed to appear before the respondent on Wednesday i.e on 03.07.2019 at 10.30 a.m with a copy of the petitioners' letter dated 29.11.2016 and annexures thereto. The respondent shall, after affording sufficient opportunity to the petitioner and can consideration of the C-forms filed, pass an order of assessment *de novo* within a period of four weeks after completion of personal hearing.

8. This writ petition is disposed of in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar(CS)

cm

To:

The Assistant Commissioner (CT) (FAC).,
Kumbakonam IV Asst. Circle,
Kumbakonam, Thanjavur District.

+1 CC to Mr.A.CHANDRASEKARAN, Advocate SR-68966.
+1 CC to SPL GP SR-69638.

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