IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.6003 of 2004

A.B.B.Ltd., (formerly known as Asea Brown Boveri Ltd.,) 3C, D&F, III Floor "Century Plaza", No.561-562, Anna Salai Teynampet, Chennai – 600 018. .. Petitioner

-Vs-

1.The Commercial Tax Officer
Valluvarkottam Assessment Circle
621, Anna Salai, Chennai-6.

2.The Appellate Assistant Commissioner (CT) III
Kuralagam Annexe, 5th Floor, Chennai-600 108.

3.Sales Tax Appellate Tribunal (Additional Bench)
represented by the Secretary, New City Civil Court Buildings, Chennai -104. ... Respondents

For Petitioner : Mr.N.Inbarajan

For Respondents: Mr.Mohammed Shaffiq
Special Government Pleader
(Taxes) – for RR 1 & 2

Prayer : Writ Petition under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records on the files of the third respondent in T.A.No.592/2000 dated 12.12.2003, confirming the proceedings of the first respondent in CST No.25154/94-95 dated 25.07.1997 and quash the proceedings of the third respondent in T.A.No.592/2000 dated 12.12.2003 confirming the proceedings of the first respondent in CST No.25154/94-95 dated 25.07.1997 in so far as it relates to a turnover of Rs.1,98,26,941.50 assessed at 11.85% and Rs.54,58,238/- assessed at 16.65% and direct the first respondent to accept the 'C' declaration forms from the petitioners in respect of a turnover of Rs.2,52,85,180/-.

O R D E R

(Order of the Court was made by DR.VINEET KOTHARI, J.)

The Assessee M/s.ABB Limited (formerly known as Asea Brown Boveri Ltd.,) has filed this writ petition aggrieved by the Sales Tax Appellate Tribunal on 12.12.2003, whereby the Tribunal upheld the order passed by the first appellate authority and held that belated filing of the declaration in Form 'C' without sufficient reasons was not permitted and such declaration forms could not be furnished by the Assessee at the appellate stage so as to allow the concessional rate of tax under the Central Sales Tax Act.

2. The relevant portion of the order of the learned Tribunal is quoted below for ready reference.

> "8. On perusal of the assessment order, it was seen that the assessing officer during the scrutiny of the assessment records noticed that there was some misclassification in turnover adopted in the original assessment order dated 31.3.97. Therefore, he revised the assessment by levying tax at 11.85% on the turnover of Rs.2,00,90,205/- and at 16.65% on the turnover of Rs.54,58,238/-. The learned Assessing Officer has also noticed that exemption was wrongly allowed on the turnover of Rs.2,34,470/- and therefore, the Assessing Officer has disallowed the exemption and assessed the turnover to tax on the ground that the prices are FOR destination. But the appellant's contention is that the appellants were prevented by sufficient cause in furnishing the declaration before the Assessing Officer to the tune of Rs.2,52,85,179.50. The learned Appellate Assistant Commissioner in his order stated that the above contention of the appellants were examined and found that they were not able to prove this sufficient cause that prevented them in furnishing the C declaration forms at the time of hearing. The learned counsel for the appellants has filed certain typed set of papers, before us. The learned counsel for the appellants furnished general format to prove that they write letters to their buyers. But the appellants did not produce any returns for the assessment year in question. The learned Appellate Assistant Commissioner in his order stated that the Madras High Court in its decision reported in 94 STC

410, has held that unless sufficient cause is shown the declaration forms need not necessarily be admitted. Inasmuch as the appellants, had not proved to the Appellate Assistant Commissioner's satisfaction that they were prevented by sufficient cause in not furnishing the declaration forms. On perusal of the order of the Appellate Assistant Commissioner, it was seen that the appellants furnished the C declaration forms to the tune of Rs.2,52,85,179.50. At the time of hearing, the learned Appellate Assistant Commissioner was unable to accept the same and grant them concessional rate as per the judgments of the Madras High Court reported in 94 STC 410 and 51 STC 381. The appellants also could not produce 'C' declaration forms for the remaining turnover before the Appellate Assistant Commissioner at the time of hearing. We also perused the typed set of papers produced by the appellants. The appellants could not produce any letter for the assessment year in question. The learned Appellate Assistant Commissioner in his order stated that he confirmed the levy of tax by disallowing the concessional rate of tax on the turnover of Rs.2,56,80,443/- at the appropriate rates. The above order of the Appellate Assistant Commissioner is reasonable and acceptable. Therefore, we also confirm the levy of tax by disallowing the concessional rate of tax on the turnover of Rs.2,56,80,443/- at the appropriate rates."

3. Learned counsel for the petitioner Mr.Inbarajan submitted that the Honourable Supreme Court in the case of "State of Andhra Pradesh -Vs- Hyderabad Asbestos Cement Production Ltd.," (1994) 94 STC 410 affirmed the view taken by the Full Bench of this Court in the case of "State of Tamil Nadu -Vs- Arulmurugan and Company" (1982) 51 STC 381 and had held that the production of 'C' form at the appellate stage is also permitted subject to the Assessee showing sufficient cause for delay in furnishing such declaration forms at the appellate stage. He submitted that the Department itself has issued Circulars to this effect from time to time and the latest Circular in this regard is dated 01.02.2000, which is produced for our perusal also.

4. Learned Special Government Pleader (Taxes) Mr.Mohammed Shaffiq does not fairly dispute the legal proposition as propounded in the aforesaid Supreme Court Judgment and the

Circulars issued by the Revenue Department.

5. The relevant portions from the aforesaid Supreme Court judgment and the Circular dated 01.02.2000 are quoted below for ready reference.

> "Extract from the judgment in "State of Andhra Pradesh -Vs- Hyderabad Asbestos Cement Production Ltd.," (1994) STC 410"
>
> Therefore, the mere use of the words "the first assessing authority" in sub-rule (7) of Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957, which prescribes the furnishing of form C issued by a dealer who purchases goods from the dealer submitting his return of turnover, cannot and does not mean, in the context and scheme of the Tamil Nadu and Andhra Pradesh enactments, that the appellate authorities do not have the power to receive form C in appeal. This power can, of course, be exercised only where sufficient cause in shown by the dealer for not filing them up to the time of assessment before the first assessing authority. If, in a given case, a dealer had obtained further time frm the first assessing authority and yet failed to produce the form C before him, it is obvious that the appellate authority would adopt a stiffer standard in judging the sufficient cause shown by the dealer for not producing them earlier. Receipt of the form in appeal cannot be a matter of course; it should be allowed only where sufficient cause is established by the dealer for not producing them before the first assessing authority as contemplated by rule 12(7). The requirement of that sub-rule cannot be excluded from consideration by the appellate authority while judging the sufficiency of the cause shown. It is the primary obligation of the dealer and his failure to abide by it must be properly explained.
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> State of Tamil Nadu Vs.Arulmurugan and Company Vs.Arulmurugan and Company [1982] 51 STC 381 [Mad] [FB] and Rajeswari Stone Polishers Vs.State of Andhra Pradesh [1983], 52 STC 268 (AP)"
>
> "Extract from Circular No.Acts Cell V/59759/99 dated 01.02.2000.

"4. The issue was examined in detail. The facts of both the cases are quite different. The decision of Division Bench reported in 113 STC 496 can be applied only to that particular case and the circulars issued based on the decision of the Full Bench in the case of Tvl.Arulmurugan and Co., required no revision. The Full Bench in the case of Tvl.Arulmurugan and Co., has held that-

> "Given the assessing authority's undoubted power to allow further time for 'C' Forms to be filled on sufficient cause, the rest of its mere procedure or follow up action. Where the assessing authority is satisfied, in a given case, about the existence of sufficient cause, it must necessarily be followed up by appropriate action, such as reopening the assessment authority's statutory already completed. Perhaps the requisite corrective action can be taken by invoking the assessing authority's statutory power of rectification of mistakes. Even otherwise, the implementation, in appropriate cases, of the power to allow further time cannot be withheld on the excuse that there is no express provision either in the statute or in the statutory rules for reopening the assessment. When the power is there and the facts are there demanding the exercise, the implementation must be done as a matter of course, on the doctrine of implied or ancillary powers."

This decision of the Madras High Court was approved by the Supreme Court in the case of State of Andhra Pradesh Vs. Hyderabad Asbestos Cement Production Limited (94 STC 410).

5. The opinion of the Special Government Pleader (Taxes), Chennai was also sought in this regard. The Special Government Pleader (Taxes) has opined as follows:-

> "The entire reading of the decision in Kirloskar Brothers Ltd., shows that the Full Bench decision in Arulmurugan and Co., case has not been considered, dealt with or referred to for deciding the issue. The

> decision has been rendered on the facts of the case pertain to the Kirloskar Brothers Ltd., In such circumstances, I wonder, how question or a suspicion arises as to the decision in 113 STC 496 overrules the decision of 51 STC 381. It is a fundamental a Division Bench cannot overrule the finding of a Full Bench. Taking into consideration of the reasoning the findings rendered in the Full Bench in 51 STC 381 Vipro Foundry in 81 STC 169 and the judgment in W.P.No.19750/93 dated 15-12-1998, Sri Kumaran and Co., the Circular dated 29-06-1999 in my view is in conformity with the above rulings."

6. In the above circumstances, the Assessing Officers are instructed to follow the instructions already issued in the circulars first and second cited."

6. Having heard the learned counsel for the parties, we have seen the records and we find that the Assessee was constantly pursuing their purchasers for 'C' declaration forms and inspite of the best efforts taken by the Assessee, the purchasers omitted to handover the forms and the Assessee had sent several reminders to their purchasers. However, inspite of the efforts taken by them for obtaining such 'C' forms, the same could be procured only when the appeal was pending before the appellate authority and the same were furnished before the appellate authority. But, the Appellate Authority, without considering the said efforts taken by the Assessee, merely brushed them aside saying that there was no sufficient reason for not producing the 'C' forms earlier.

7. Having heard the learned counsel for both sides and in view of the decision of the Honourable Supreme Court and the Circulars of the Revenue Department from time to time, we are satisfied that in the present case, the two appellate authorities have concurrently failed to appreciate not only the fact that the Assessee was entitled to file the 'C' declaration forms even at the appellate stage, which was nothing but continuation of the assessment proceedings, but also, they being the fact finding authority, were entitled to peruse the facts as the assessment authority. We also find that without assigning any valid reason, the appellate authorities have just rejected the declaration forms, causing unnecessary further litigation. The only exercise they could have undertaken was to see the

genuineness of the declaration forms and in normal circumstances, the same should have been accepted by the appellate authority in the first instance.

8. Therefore, we are inclined to allow this writ petition and send the matter back to the Assessment Authority for checking the declaration forms, which were produced before the first appellate authority on record and allow suitable concessional rate of tax in accordance with law. We make it clear that this order of remand will not entitle the Assessee to produce any other declaration forms, which were not hitherto produced before the appellate authority. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KST

To

1.The Commercial Tax Officer,
Valluvarkottam Assessment Circle,
621, Anna Salai, Chennai-6.

2.The Appellate Assistant Commissioner (CT) III,
Kuralagam Annexe,
5th Floor, Chennai- 600 108.

3.Sales Tax Appellate Tribunal (Additional Bench)
represented by The Secretary,
New City Civil Court Buildings,
Chennai -104.

+1cc to Mr.N.Inbarajan, Advocate SR.12921
+1cc to Special Government Pleader(Taxes) SR.13782

W.P.No.6003 of 2004

LN(CO)
CB(16/03/2020)