IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.29829 and 29836 of 2018
and
W.M.P.Nos.34819 & 84830 of 2018

Siemens Ltd.,
Rep., by the Manager,
Indirect Taxation, Miss.G.Vasanthi,
R.S.16/8, Vazhuthavur Road,
Kurumbapet, Villianur Commune,
Pudhucherry-605 009. ..Petitioner in both W.Ps.

-vs-

The Additional Deputy Commercial
Tax Officer-IAC,
2nd Floor, 100 Feet Road,
Ellapillai Chavadi,
Pudhucherry-605 005. ..Respondent in both W.Ps.

Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the case from the file of the respondent herein, quash the impugned orders in Nos.34340000858/74/2012-13 and 34340000858/74/2013-14 for the assessment years CST/2012-13 and CST/2013-14 dated 17.10.2018 passed by the respondent refusing to rectify the orders of assessment in Nos.34340000858/2012-13 and 34340000858/74/2013-14 for the assessment years CST/2012-13 and CST/2013-14 dated 18.07.2016 and direct the respondent to consider all the declaration Forms (Form C and Form I) and pass rectified orders of assessment.

For Petitioner (In both W.Ps.)	:	Ms.Lakshmi Sriram
For Respondent (In both W.Ps.)	:	Mr.G.D.Jerany, Government Advocate (Puducherry)

COMMON ORDER

The petitioner is a registered dealer on the file of the Additional Deputy Commercial Tax Officer-IAC, Pondicherry. The respondent finalized the assessment for the assessment years 2012-13 and 2013-14 vide orders dated 18.07.2016 and levied difference of tax in respect of the turnover for the statutory Forms, viz., Form-I and Form-C, which were not furnished for exemption/concessional rate of tax at the time of passing the orders of assessment.

2.After the orders of assessment dated 18.07.2016 were passed, out of an additional demand/levy of Rs.71,30,428/-, an amount of Rs.56,66,727/- has been adjusted against the excess tax paid in the previous year and remitted balance Rs.14,61,701/- vide e-receipt No.74114091 dated 29.07.2016. It is submitted that the above additional demand was only on account of non-submission of Form-C and Form-I to be issued by their customer, who purchased goods on promising to furnish the respective declaration Forms as provided under the Central Sales Tax Act, 1956 (hereinafter referred to as "the CST Act") and Rules made thereunder and not arising out of rejection of claims. The efforts taken by the petitioner to obtain Forms from the respective buyers situated outside the State of Puducherry went in vein and they were not in a position to furnish the Forms due to the introduction of Forms generation through Government Web Portal and other constraints at their end. The petitioner filed applications for rectification under Section 73 of the Puducherry Value Added Tax Act, 2007 (hereinafter referred to as "the PVAT Act") read with Section 9 (2) of the CST Act for the assessment years 2012-13 and 2013-14.

3.The learned counsel for the petitioner states that the rectification applications filed were not considered and the rectifications pointed out were not carried out and the actions, in this regard, by the respondent are in violation of the provisions of the PVAT Act. The reasons given in the impugned orders for rejection of rectification are not in accordance with law and in this regard, the applications filed by the petitioner for rectification under Section 73 have not been considered. The non-consideration of the applications resulted denial of opportunity and further, in violation of the principles of natural justice. In this context, the learned counsel for the petitioner reiterated that several orders are passed by this Court in this aspect and one such order is dated 28.10.2014 passed in the case of Prime Associates vs. Assistant Commissioner (CT), Sowcarpet-I Assessment Circle W.P.No.17896 of 2014]. The relevant portion of the order dated 28.10.2014 reads as hereunder:-

"5.It is submitted by learned counsel for the petitioner that since documents were not produced before the Assessing Officer, the assessment has been completed but now the petitioner is in possession of Form-C declaration and he will be in a position to submit all the documents, if an opportunity is granted. It is to be noted that while filing the Petition under Section 84 & 85 of TNVAT Act, the petitioner has enclosed a cheque for Rs.4,371/- towards the net VAT tax payable for the month of March 2011 and the said cheque has been encashed by the respondent. However, the petition under Section 84 of the Act is still pending. In the light of the fact that order has been passed only on account of non-production of records which is available with the petitioner at this juncture, this Court is of the view that an opportunity should be provided to the petitioner to submit the records.

6.Accordingly, the Writ Petition is allowed and the matter is remitted back to the respondent for fresh consideration. The respondent shall take on file the application filed by the petitioner under Section 84 of TNVAT Act dated 20.02.2014 and permit the petitioner to produce the documents in support of his claim and after affording an opportunity for personal hearing, the respondent shall pass orders on merits, within a period of three months from the date of receipt of a copy of this order. Consequently, the connected M.P is closed. No order as to costs."

4.The learned counsel for the respondent is unable to dispute the said proposition laid down by this Court in the decision cited supra as well as the other orders passed by this Court in W.P.No.24288 of 2016 dated 14.07.2016 and W.P.Nos.24188 and 24189 of 2015 dated 11.08.2015.

5.In this view of the matter, the impugned orders passed by the respondent in proceedings dated 17.10.2018 are quashed and the matter is remitted back to the respondent for fresh consideration. The respondent shall take on file the applications filed by the petitioner under Section 73 of the PVAT Act and permit the petitioner to produce all the documents in support of their claim and afford an opportunity for personal hearing. Thereafter, the respondent shall pass orders on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order.

Accordingly, both the writ petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

abr

To

The Additional Deputy Commercial
Tax Officer-IAC,
2nd Floor, 100 Feet Road,
Ellapillai Chavadi,
Pudhucherry-605 005.

+2cc to Mr.Lakshmi Sriram, Advocate, S.R.No.29649
+1cc to the Government Pleader, S.R.No.29667

W.P.Nos.29829 & 29836 of 2018

PMK(CO)
RGA(30/07/2021)