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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **21.02.2023**

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THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W. P.Nos.4863, 4869, 4870 and 4873 of 2023
and
W.M.P.Nos.4895, 4898, 4900 and 4901 of 2023

M/s.Balaji Machine Works Pvt. Ltd.,
Rep. by its Authorised Signatory K.Anandakala,
SF No.248/1B,
Kadathur, Kattampatty Village,
Coimbatore - 641 107. ... Petitioner

In all W.Ps.

Vs.

The Assistant Commissioner (CT),
Annur Assessment Circle,
CTO Buildings, Dr.Balasundaram Road,
Coimbatore - 641 018. ... Respondent

In all W.Ps.

COMMON PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, quashing the impugned orders passed by the respondent in CST:1025776/2008-09,

CST:1025776/2010-11, CST:1025776/2012-13 and TIN

33412122129/2008-09 all dated 15.12.2022.

For Petitioner

In all W.Ps. : Mr.S.Durai Raj



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For Respondent

In all W.Ps. : Mr.V.Prasanth Kiran
Government Advocate

COMMON ORDER These Writ Petitions have been filed challenging the impugned assessment orders all dated 15.12.2022 passed under the Central Sales Tax Act, 1956 (*Hereinafter after to as CST Act*) in respect of the assessment years 2008-09, 2010-11 and 2012-13 and under the Tamil Nadu Value Added Tax, Act 2006 (*Hereinafter referred to as TNVAT Act, 2006*) in respect of the assessment year 2008-09, on the ground of violation of principles of natural justice.

2. This is the second round of litigation before this Court. Earlier, the petitioner had challenged the assessment orders also on the ground of violation of principles of natural justice. This Court by its order dated 24.02.2020 quashed the earlier assessment orders and remanded the matters back to the respondent for fresh consideration on merits and in accordance with law, after adhering to the principles of natural justice. Pursuant to the order dated 24.02.2020 passed in W.P.Nos.32277 of 2015, etc., batch, the assessment orders impugned in the present Writ Petitions have been passed.



3. The petitioner has challenged the impugned assessment orders on the following grounds:

a) Despite having received the 'C' and 'F' Declaration Forms on 17.05.2022 and despite seeking three weeks time to send a detailed reply by its communication dated 10.05.2022, the respondent has not considered the said request and has also not considered the 'C' and 'F' Declaration Forms submitted by the petitioner in the impugned assessment orders;

b) The Petitioner received the communication from the respondent, calling upon them to appear for personal hearing only on 02.12.2022, which is the date of personal hearing and therefore, they were unable to attend the same.

4. As seen from the documents filed along with these Writ Petitions, the letters dated 17.05.2022 sent by the petitioner to the respondent in which the petitioner alleges that 'C' and 'F' Declaration Forms are enclosed are acknowledged only by the Assistant of the respondent.



5. On instructions, learned Government Advocate appearing for the respondent would categorically state that the 'C' and 'F' Declaration Forms said to have been enclosed by the petitioner along with its communications dated 17.05.2022 was never received by the respondent. The Acknowledgment of the Assistant in the respondent' Office is not accompanied by the Office seal of the respondent. An Authorised Officer has not acknowledged on behalf of the respondent.

6. Even if the petitioner's case that the communication with regard to their appearance for personal hearing on 02.12.2022 was received by them only on 02.12.2022 is to be accepted, the petitioner has not sent any communication to the respondent immediately thereafter informing them that they were unable to attend the personal hearing only due to the reason that they received the communication informing the date of personal hearing only on 02.12.2022.

7. Being a second round of litigation before this Court, the petitioner



ought to have been diligent enough by communicating with the respondent in writing that they were unable to attend the personal hearing on 02.12.2022 only due to the reason that they had received the communication only on 02.12.2022 i.e., on the date of the personal hearing. Therefore, the second contention of the petitioner viz., they were unable to attend the personal hearing only due to the reason that they had received the communication only on the date of the personal hearing, has to be rejected by this Court.

8. Learned counsel for the petitioner drew the attention of this Court to a Judgment of a learned Single Judge of this Court in the case of *M/s.Arvind Remedies Ltd., Vs. The Assistant Commissioner (CT), Vepery Assessment Circle, Chennai - 600 006 dated 28.09.2016* reported in *2016TIOL-2691-HC-MAD-VAT* and would submit that if the documents viz., 'C' and 'F' Declaration Forms were submitted by the dealer subsequent to the passing of the assessment orders, the said communication enclosing the said Forms can be treated as a rectification petition under Section 84 of the TNVAT Act, 2006.

9. The relevant paragraphs of the aforementioned Judgment of the learned Single Judge is extracted hereunder:



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"5. So far as the issue as to whether the respondent would be entitled to accept the "C" and "F" declaration forms, after the assessments are completed, came up for consideration before the Hon'ble Full Bench of this Court, in the case of State of Tamil Nadu Vs. Arulmurugan & Co. [reported in (1982) 51 STC 381]. The plea raised by the Revenue, was that after the completion of assessments, the Assessing Authorities would become functus officio, so far as those assessments were concerned and therefore, he cannot accept any declaration forms subsequently. While repelling such contention raised by the Revenue, the Hon'ble Full Bench of this Court observed as follows:-

"...Given the assessing authority's undoubted power to allow further time for C forms to be filled on sufficient cause, the rest of it is 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 already completed. Perhaps the requisite corrective action can be taken by invoking the assessing authority's statutory power of rectification of mistakes. Even otherwise,



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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 then demanding its exercise, the implementation must be done as a matter of course, on the doctrine of implied or ancillary powers. When there is a power, and when there is a will, there will be a way. It is, however, unnecessary to pursue the line of discussion further, because the particular problem we are concerned with in the two cases before us

is quite different.....”

6. *The above decision of the Hon'ble Full Bench of this Court is affirmed by the Hon'ble Supreme Court in the case of State of A.P. v. Hyderabad Asbestos Corporation Ltd., [reported in (1994) 94 STC 410]. The said decision was rendered, while considering the scope and power of the Assessing Authority under Section 55 of the Tamil Nadu General Sales Tax Act, 1959, which is in pari materia with Section 84 of the TNVAT Act. After the decision of the Hon'ble Full Bench of this Court and the Hon'ble Supreme Court, the Commissioner of Commercial Taxes, Chennai, issued a circular dated 28.02.2001 instructing the Assessing Authorities that they are empowered to revise the assessments under Section 55 of the erstwhile Tamil*



Nadu General Sales Tax Act, which is in pari materia with Section 84 of the TNVAT Act on furnishing of declaration forms.

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7. *In view of the above legal position, the respondent should not refuse to accept "C" and "F" declaration forms, solely on the ground that they have been produced by the petitioner, after completion of the assessments.*

8. *In the light of the law laid down by the Hon'ble Supreme Court as well as the circular issued by the Commissioner of Commercial Tax, it would be well within the jurisdiction of the respondent to accept the forms and consider the same, in accordance with law.*

9. *Accordingly, there will be a direction to the respondent to entertain the petitioner's petitions under Section 84 of the TNVAT Act, dated 07.09.2016 for all the seven assessment years and direct the petitioner to appear in person and produce "C" and "F" declaration forms and on verification, the respondent shall re-do the assessments in accordance with law. In the light of the above directions, the attachment of the petitioner's bank account shall be lifted and no coercive action shall be initiated till the petitions under Section 84 of the TNVAT Act, are considered and disposed of. The above exercise shall be complied with by the respondent, within a period of four weeks from the date of receipt of a copy of this order."*



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10. As seen from the aforementioned Judgment which has followed a Full Bench of this Court as well as the Honourable Supreme Court, it is clear that the respondent cannot refuse to accept 'C' and 'F' Declaration Forms solely on the ground that they have been produced by the petitioner after completion of the assessments. In the instant case, subsequent to the passing of the impugned assessment orders, the petitioner claims to have submitted the 'C' and 'F' Declaration Forms with the respondent along with its communication dated 20.01.2023. The said communication is also acknowledged by the Deputy State Tax Officer - 2, Annur Circle, Coimbatore on 25.01.2023. However, the learned Government Advocate appearing for the respondent would submit that he has to get instructions with regard to the same.

11. This Court having noticed from the communication dated 20.01.2023 that the said acknowledgment has been duly acknowledged by the Deputy State Tax Officer - 2, Annur Circle, Coimbatore by name P.Vasagi, is of the considered view that the said communication was duly received by the respondent. However, to avoid any doubt, the petitioner will have to re-submit 'C' and 'F' Declaration Forms once again with the respondent.



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12. This Court is in agreement with the view taken by the learned Single Judge of this Court in *M/s.Arvind Remedies Ltd., Vs. The Assistant Commissioner (CT), Vepery Assessment Circle, Chennai - 600 006* case referred to supra. However, the petitioner will have to re-submit the 'C' and 'F' Declaration Forms with the respondent once again, within a time frame to be fixed by this Court and appear for personal hearing on the fixed date.

13. In so far as the impugned assessment orders are concerned, since there is no violation of principles of natural justice till the date of the assessment orders, this Court is not interfering with the impugned assessment orders. However, in view of the fact that the petitioner has submitted the 'C' and 'F' Declaration Forms with the respondent on 20.01.2023, after passing of the impugned assessment orders, the petitioner is directed to file a fresh application under Section 84 of the TNVAT Act, 2006, seeking for rectification of the impugned assessment orders, enclosing the 'C' and 'F' Declaration Forms and all other required documents, within a period of one week from the date of receipt of a copy of this order. On receipt of the said application, the respondent shall afford a personal hearing to the petitioner on 09.03.2023 at 10:30 a.m.. The petitioner is also directed to appear before the



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respondent on the said date without fail. After affording a personal hearing to the petitioner on the said date, the respondent shall pass final orders on merits and in accordance with law on the rectification application within a period of four weeks from the date of the personal hearing granted to the petitioner. Till final orders are passed, no coercive steps shall be taken by the respondent against the petitioner.

14. With the aforementioned directions, these Writ Petitions are disposed of. No Costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

21.02.2023

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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To

The Assistant Commissioner (CT),
Annur Assessment Circle,
CTO Buildings, Dr.Balasundaram Road, Coimbatore - 641
018.



ABDUL QUDDHOSE. J.,

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W.P.Nos.4863, 4869, 4870 and 4873 of 2023

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