

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on November 19, 2014

Judgment delivered on December 11, 2014

+ **ST. REF. NO. 17/2002**

M/S. NATIONAL ALUMINIUM CO. LTD. Petitioner

Through: Mr. Debashish Mohapatra,
Advocate

versus

COMMISSIONER OF SALES TAX, DELHI Respondent

Through: Mr. Sushil Dutt Salwan,
Advocate

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J.

1. The present reference has been made by the Appellate Tribunal,

Sales Tax, Delhi on the following questions:

1. Whether on the facts and in the circumstances of the case, the Tribunal was right in disallowing the claim of deduction under Section 4(2)(a)(v) in respect of form No. 02AA-996226 for Rs.30,23,582/- on the ground that the dealer did not exercise the ordinary business prudence and the transactions cannot be said to be in a normal course of business without recording a finding as to positive connivance or collusion of the dealer?

2. Whether on the facts and in the circumstances of the case, the Tribunal was correct in distinguishing the ratio of the Delhi High Court's judgment in the case of CST Vs. Hari Ram Oil Co. 87 STC 493 where the purchasing dealer had returned his registration certificate prior to the date of transaction with the

selling dealer?

2. The brief facts are, the petitioner is a Central Public Sector Undertaking under the administrative control of the Ministry of Mines. The year of assessment is 1994-95.

3. The petitioner received goods from its factory situated outside Delhi and for the Financial Year 1994-95, the petitioner submitted 321 ST-35 Forms in support of the exemption for sale to local registered dealers. The Sales Tax Authorities rejected four ST-35 Forms. This reference relates to the following two forms:

Form No.	Purchasing Dealer	Amount
02AA-996226	KPS Industries	INR 30,23,582/-
01AA-147012	Capital Automobiles	INR 8,63,848/-

4. The Assessing Authority insofar as the aforesaid two forms are concerned, was of the following view:

1- Form No. 02AA-996226 amount Rs. 30,23,582. This form has been issued by registered dealer Ward No. 92 M/s. K.P.S. Industries, 160, Okhla Industrial Complex. But as per the verification report, the dealer in his utilisation account has shown this form as given to M/s. MMTC of India Ltd. for Rs.366031.65.

2- Form No. 01AA-147012-amount Rs. 83,63,848/- This form has been issued by registered dealer of Ward No. 85 M/s. Capital Automobiles, 91, Shop No. 6, Sarai Kale Khan, Nizamuddin, New Delhi. As per the report received from the concerned Ward, the registration certificate of this dealer has been cancelled with effect from 2.4.1990 and the file of the dealer has been sent to the Vigilance Department.”

5. That apart, he imposed an interest @ 7% of the total amount of Rs.1,79,12,318/-. On appeal, the Appellate Authority-I confirmed the order of the Assessing Authority. Before the Appellate Tribunal, Sales Tax, Delhi, it was the contention of the petitioner that; (1) it had made regular sales to M/s K.P.S. Industries and that it did not have any reason to doubt the bona fides of the dealer, more so, when the earlier details filled in it were corrected and had been authenticated; (2) it had asked a copy of the registration certificate, which was supplied by M/s. Capital Automobiles, no gazette notification for cancellation of registration certificate was issued till at least 1995. The fact that the purchasing dealer had a statutory form was indicative of the registration. According to the petitioner, there was no reason to doubt the authenticity. The petitioner relied upon the judgment in the case of *Commercial Officer, Sales Tax Vs. Hari Ram Oil Company, [1992] 87 STC 493*

6. The Appellate Tribunal, on the aforesaid contentions was of the view that even if it is agreed that there was a chance that a form 02AA-996226 could be re-used even after cutting and it was authenticated, the fact that the said form was originally issued three years earlier, should have put the petitioner on guard. The Tribunal, additionally held that as a part of ordinary business procedure, the appellant should have enquired as to the genuineness of the form, from the Ward Officer. The Tribunal

held, the sales tax was thus payable.

7. Insofar as form No. 01AA-147012 issued to the purchasing dealer M/s. Capital Automobile, the Tribunal records that the form has been used by the purchasing dealer on 2.6.1988 against a bill from M/s. Nath Traders. The Tribunal disbelieved; the petitioner's stand, that the registration certificate was seen. It also rejected, the stand of the petitioner that gazette notification regarding cancellation of registration certificate was not issued. The Tribunal ultimately, in its order dated 02 November, 2001 held that the action of the petitioner fell short of the requirement of the good faith since it had not cared to verify the RC and as such held the sales tax as payable. We may state here that the Tribunal has deleted the interest imposed on the petitioner.

8. Mr.Debhashish Mohapatra, Advocate appearing for the petitioner would submit that the respondents have clearly erred in rejecting the claim of the petitioner by directing it to pay the sales tax as due even though there is no fault of the petitioner in the transactions concerned.

9. On the other hand, Mr.Sushil Salwan, counsel appearing for the respondent would support the order of the Authorities and seek the dismissal of the reference.

10. Having heard the learned counsel for the parties, insofar as question No. 1 is concerned, the same relates to the form at Serial No. 1

above. In fact, a perusal of the form would show that the name of the MMTC was written on the form. Subsequently, the name of MMTC was scored off and the name of the petitioner was mentioned by putting initials. It has also come on record that MMTC in its communication to the petitioner had confirmed that no sale was made by them to M/s. KPS Industries against the subject form and the said form had not been utilized by MMTC. The form was issued to the petitioner on 24.11.1994 and to the purchasing dealer somewhere in 1991 as the form bears the date of 25.11.1991, which is the date on which, it was supposed to have been issued to MMTC. If the facts are seen from businessman perspective, it is noted that the words 'MMTC' after being scored off were properly initialled; there was no bar to use the form after three years nor such a case has been advanced by the revenue. Later, the petitioner got confirmation from MMTC that it did not utilize the form. If in the utilization account, the dealer has shown his form as given to MMTC, it was clearly a mistake of the dealer and not of the petitioner. It was for the dealer to clarify that he could not correct the error crept in the utilization account. There was no fault on the part of the petitioner in accepting the said form from the purchasing dealer. We are conscious of our limitation as a Court of Appeal. The Tribunal, has, in a very perfunctory manner, disallowed the claim of the petitioner overlooking

the above. We deem it appropriate to remand the matter back to the Tribunal on issue No. 1. It would look the issue afresh and the facts which are on record, and after ascertaining that there was no duplication and/or misuse, conclude whether, petitioner would be entitled to the benefit of the form in question. We may add here, it is impractical for the dealer to check every time the authenticity of the form.

11. Insofar as the question No. 2 is concerned, the same relates to the form at Serial No. 2 above, wherein the value of goods involved was Rs. 8,63,848/-. It has come on record that the registration certificate of the dealer was cancelled w.e.f. 02.04.1990, that too, on his own asking. It has also come on record that the said form was given to the petitioner by the dealer in the year 1995. It has come on record that the purchasing dealer has used the said form on June 02, 1988 against some bill for Rs. 31,500/- from M/s. Nath Traders. The case of the petitioner was that it has seen the Registration Certificate of the purchasing dealer in the year 1994, has not been accepted by the Tribunal, rightly so, when the registration was cancelled, in the year 1990, there was no occasion to see it in 1994. Moreover, a copy of the certificate was not placed on record. The ground urged by the petitioner apart from being incorrect also does not inspire confidence. It was also not the case of the petitioner because of very close business relationship with the dealer, the authenticity of the

form could not be doubted. We agree with the conclusion of the Tribunal that the petitioner was complacent with the transaction without caring to see whether purchasing dealer was registered or not and whether the purchasing dealer was authorized to purchase goods against the statutory form. The findings of the Tribunal are also factual, based on examination of factual allegations. The said findings are cogent and reasonable.

12. Insofar as the judgment in *Hari Ram Oil's case (supra)* is concerned, this Court was concerned with the case, where the dealer made sale in favour of two parties namely M/s. Narender Kumar Krishan Kumar and M/s. Sunrise Lubricants. In the case of Narender Kumar Krishan Kumar, there were nine sales, totalling to Rs. 1,00,200/- while the sale in favour of the latter concern, was of Rs. 23,000/-. The dealer had obtained declarations from these purchasers and sought the benefit of exemption from sales tax in his return. The Assessing Authority however found that the registration certificate of M/s. Narender Kumar Krishan Kumar has been cancelled w.e.f. 01st April, 1973, while the registration certificate of M/s. Sunrise Lubricants has been cancelled w.e.f. 15th October, 1973. The Assessing Authority came to the conclusion that the dealer was not entitled to the benefit of the same made to the said purchaser because the registration certificates have been

cancelled and the sales made could not be regarded as sales having been made to the registered dealer. An appeal to the Asstt. Commissioner of Sales Tax, resulted in a finding that the declarations issued by them were invalid and deduction claimed by the dealer could not be allowed. In the second appeal, it was contended that the publication of the cancellation of the registration certificates of the two purchasers was effected only on 30th July, 1974 and therefore, the dealer was entitled to take advantage of the declarations which have been issued. The Tribunal, relying upon two judgments of the Andhra Pradesh High Court, reported as *Arjan Radio House Vs. Assessing Authority [1973] 31 STC 49 (Pandh)* and *Yemmiganur Spinning Mills Limited Vs. State of Andhra Pradesh [1976] 37 STC 314 (AP)*, has observed that when the department was negligent in not publishing the cancellation, it could not invalidate the declarations obtained in good faith by the dealer. On a reference by the Tribunal, the High Court was of the view that the intention of the legislature in promulgating Rule 12 which stipulates when the registration certificate is cancelled, the order of cancellation as soon as possible after the same has been made be published in the official gazette, was that the factum of cancellation of registration must be known to the whole world. The High Court was of the view that once the factum of the cancellation of registration is published, no dealer can

plead that he was ignorant about the cancellation. The High Court also held, if the selling dealer obtains a declaration and it is known to him that the registration certificate of the purchaser has been cancelled and that cancellation is not notified in the official gazette, the selling dealer is entitled to the benefit under the Act. In the case in hand, it was the case of the petitioner, that it had seen the registration certificate of the purchasing dealer in the year 1994. As a fact, the registration certificate of the dealer was cancelled on 02.04.1990. Even though, no gazette notification was issued, the ground of having seen the certificate and no gazette notification was issued are contradictory inasmuch as if the registration certificate was seen, then the same was not cancelled and no question of gazette notification having been issued arises. On facts, the judgment of *Hari Ram Oil's case* (supra) would not be applicable. That apart, *Hari Ram Oil's case* (supra) would also not be applicable to the facts of this case as no declaration in the manner taken by the petitioner in that case, was taken. We are of the view that the Tribunal has rightly held that the ratio in the *Hari Ram Oil's case* (supra) would not be applicable.

13. We note, this issue would be covered by the observations of the judgment of this Court decided on July 12, 2012, reported as **[2003] 131 STC 372 (Delhi) Prince Plastics & Chemical Industries & Ors. vs.**

Commissioner of Sales Tax & Ors., wherein the Court was considering one of the submissions made on behalf of the petitioners that the purchasing dealers should be supplied with ST-1 Forms regardless of whether such dealers have relinquished their registered status, or have committed other infractions of the Act and Rules, held even if purchasing dealers have applied for ST-1 Forms but have not received them for any reason, the selling dealer is not automatically exonerated from liability, nay the statutory duty to collect tax, since the ST-1 Form is not forthcoming. Traders are apparently quite willing to run the risk of one amongst many transactions going sour, so far as supply of these forms is concerned. According to the Court, it is not uncommon for a purchasing dealer to renege on its assurance to supply ST-1 Forms to the selling dealer. The State does not thereupon forfeit its entitlement for sales tax. Extending this a little further, there is likewise no reason for the State to lose its revenue merely because the purchasing dealer is unable to obtain such Forms because of this falling in arrears. It is wholly illogical to place the State in such a position where it cannot recover its sales tax dues at all. Although equity plays only a minuscule role in fiscal matters, even if such considerations were to be applied, there would still be no justification for an application adverse to the interests of the State. The dealer who has chosen to trust the other dealer

must suffer and can take action against the party. *In Prince Plastics & Chemical Industries* (supra), the court has observed that this is the risk an assessee runs and if for any reason, including a subsequent decision of the Sales Tax Department to withhold the supply of ST-1 Forms to a purchasing dealer they are put in an uncomfortable position of having to pay the tax and initiate appropriate legal action for recovering it from the Purchasing Dealer, so be it. The State is entitled to its tax, where the requisite ST-1 Form is unavailable for any reason.

14. We answer the question No. 1 of the reference accordingly in favour of the petitioner by remanding the matter back to the Tribunal, in terms of para 10 above. We direct the parties to appear before the Tribunal on 12.01.2015, on which date, the Tribunal will fix a date of hearing. Insofar as the question No. 2 is concerned, the same is answered against the petitioner and in favour of the revenue. Suffice to state, petitioner is not entitled to the deduction.

(V.KAMESWAR RAO)
JUDGE

(SANJIV KHANNA)
JUDGE

DECEMBER 11, 2014/akb