IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3911 of 2014

==

M/s. Rafai Scrap Udyog, a Proprietary concern having its place of business at Dandi Parao, P.S. Mugalsarai, Dist. Chandauli through its Proprietor Israr Ahmad, son of Md. Yusuf, Resident of S-2/74A, Dithori Mahal, Orderly Bazar, P.S.- Cantt, District- Varanasi

.... Petitioner

Versus

1. The Union of India, Ministry of Railway, through its Secretary, Rail Bhavan, New Delhi
2. The General Manager, East Central Railway, Hajipur (Vaishali)
3. The Controller of Stores, East Central Railway, Hajipur (Vaishali)
4. The Chief Material Manager (Sales), East Central Railway, Hajipur (Vaishali)
5. The Deputy Chief Material Manager (Depot), East Central Railway, Samastipur
6. The State of Bihar through Commissioner of Commercial Taxes, Samastipur
7. The Deputy Commissioner of Commercial Taxes, Samastipur Circle, Samastipur

.... Respondents

==

Appearance :

For the Petitioner/s : Mr. S.D.Sanjay, Sr. Advocate with
Mr. Alok Kumar Agrawal, Advocate

For the State : Mr. Piyush Lal, AC to PAAG

For the Railways : Mr. Siddharth Prasad, Advocate

==

CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 16-01-2015

Heard learned counsel for the petitioner and learned counsels for the State and for the Railways.

2. The writ petition had originally been filed for a direction to the respondents to issue challan on the basis of declaration in Form-C to enable the petitioner to deposit the balance sale value to complete the transaction of sale and for further direction to accept the physical copy of declaration in Form-C for allowing the issuance of challan as

inter state sale transaction and not as a local sale in Bihar in view of the nature of sale and for restraining the respondents from denying the issuance of challan on receipt of physical copy of declaration in Form-C.

3. Subsequently, a Circular Letter No. 4354 dated 5.12.2013 of the Commissioner-cum-Principal Secretary, Commercial Taxes Department, Bihar has been brought on the record in the counter affidavit filed on behalf of the Railways in which direction had been issued to all the circle in-charge of the different Commercial Taxes Circles that only such Form-C should be accepted which has been uploaded on TINXSYS software and the dealers should be informed that in case they deposit Form-Cs without uploading on TINXSYS software then action shall be taken against them in accordance with law and the benefit of lower rates or exemption should be given on the basis of such Form-Cs which have been uploaded on the TINXSYS software, which the petitioner was permitted to challenge by filing an interlocutory application.

4. Learned counsel for the petitioner submits that the provisions with regard to the issuance and submission of Form-C are contained in Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 framed by the Central Government in exercise of powers conferred by sub-Section (1) of Section 13 of the Central

Sales Tax Act, 1956 and thus it is not open to any executive authority including the Commissioner of Commercial Taxes, Bihar to lay down anything by his Circular or executive instructions which is contrary to what has been provided by the said Rule. It is submitted that so long as the Form-Cs are being produced by the petitioner who is a dealer of scrap based in the State of U.P. and purchases the same from the Railways in Bihar and Jharkhand from time to time, it is not open to the Sales Tax authorities of Bihar to issue any direction that such form duly issued by the Sales Tax authorities of the State of U.P. should not be accepted or given effect to or legal proceedings be initiated against the dealer who supplies such forms.

5. It is further submitted that admittedly the authorities of the State of U.P. are issuing Form-Cs manually as also by uploading on TINXSYS software, which fact is admitted in paragraph-3 of the supplementary counter affidavit filed by respondent No.6, Deputy Commissioner of Commercial Taxes, wherein it is stated that the Sales Tax Department of U.P. by its e-mail informed the Commercial Taxes Department, Bihar that in the State of U.P. data of central forms downloaded by the dealers are provided to TINXSYS and that the central forms issued manually by the Department are not uploaded on TINXSYS software.

6. Rule 12 (1),(2), (6), (7) and (8) of the Central Sales Tax

(Registration And Turnover) Rules, 1957 are in the following terms :

> "12(1) The declaration and the certificate referred to in sub-section (4) of section 8 shall be in Forms C and D respectively;
>
> Provided that Form C in force before the commencement of the Central Sales Tax (Registration and Turnover) (Amendment) Rules, 1974, or before the commencement of the Central Sales Tax (Registration and Turnover) (Amendment) Rules, 1976, may also be used upto the 31st December, 1980 with suitable modifications:
>
> Provided further that a single declaration may cover all transactions of sale, which take place in a quarter of a financial year between the same two dealers.
>
> Provided also that where, in the case of any transaction of sale, the delivery of goods is spread over to different quarters in a financial year or of different financial years, it shall be necessary to furnish a separate declaration or certificate in respect of goods delivered in each quarter of a financial year.
>
> (2) Where a blank or duly completed form of declaration is lost, whether such loss occurs while it is in the custody of the purchasing dealer or in transit to the selling dealer, the purchasing dealer shall furnish in respect of every such form so lost an indemnity bond in Form G to the notified authority from whom the said form was obtained, for such sum as the said authority may having regard to the circumstances of the case, fix. Such indemnity bond shall be furnished by the selling dealer to the notified authority of his State if a duly completed form of declaration received by him is lost, whether such loss occurs while it is in his custody or while it is in transit to the notified authority of his State :
>
> Provided that where more than one form of declaration is lost, the purchasing dealer or the selling dealer, as the case may be, may furnish one such indemnity bond to cover all the forms of declaration so lost.
>
> (6) Form C referred to in sub-rule (1) or, as the case may be, Form F referred to in sub-rule (5), shall be the one obtained by the purchasing dealer or, as the case may be, the transferee in the State in which the goods covered by such form are delivered.

Explanation.- Where, by reason of the purchasing dealer not being registered under section 7 in the State in which the goods covered by Form C referred to in sub-rule (1) are delivered, he is not able to obtain the said form in that State, Form C may be the one obtained by him in the State in which he is registered under the said section.

(7) 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 within three months after the end of the period to which the declaration or the certificate relates :

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.

(8) (a) The person referred to in clause (a) of sub-rule (1) of rule 3 shall alone be competent to sign the declaration in Form C or Form F or the certificate in Form EI or Form E II :

Provided that where such person is a proprietor of any business or a partner of a firm or a karta or manager of a Hindu Undivided Family, any other person authorized by him in writing may also sign such declaration or certificate :

Provided further that in the case of a company such declaration or certificate can also be signed by any other officer of the company authorized under the Memorandum or Articles of Association of the company or under any other special or general resolution of the company or under a resolution passed by the Board of Directors of the company, to authenticate any document on behalf of such company.

(b) Such person shall signify on such declaration or certificate his status and shall make a verification in the manner provided in such declaration or certificate."

7. It is evident from a consideration of the

aforesaid Rules that the Rules themselves do not provide for uploading of the Form on TINXSYS or any other software system. They also provide for the issuance of manual Form Cs to the dealers. It is true that the TINXSYS software has been evolved as a national measure to verify the validity of the Form Cs that are being issued, as such forms when issued are uploaded by the Department of different States on TINXSYS software leading to instant verification of the same regarding valid issuance by different States. However, as informed by Commercial Taxes Department of U.P. that they have also been issuing Form-Cs manually which are not being uploaded on TINXSYS software. The Rules do not provide that all such forms have to be mandatorily uploaded on TINXSYS software. In such a situation, it is beyond the jurisdiction and power of the Secretary, Commercial Taxes Department, Bihar to issue such circular letter dated 5.12.2013 which is not in accord with the provisions of the Central Sales Tax (Regulation and Turnover) Rules, 1957.

8. Learned counsel for the State is unable to satisfy this Court as to any provision under the Central Sales Tax Act or Rules which authorises the Commissioner-cum-Principal Secretary, Commercial Taxes Department to issue executive instructions or orders contrary to what has been provided by the Rules.

9. In the aforesaid view of the matter, the Circular Letter

No. 4354 dated 5.12.2013 issued by the Commissioner-cum-Principal Secretary, Commercial Taxes Department, Bihar is quashed and the respondents are directed to accept blank Form-C issued to the petitioner by the authorities of Commercial Taxes Department of U.P. forthwith, subject of course to process of manual verification as was being followed earlier in case of such forms. The respondent Railway is directed to accept the blank Form-C issued to the petitioner and duly filled up subsequently without being uploaded on TINXSYS software and thereafter the respondent authorities of the Commercial Taxes Department shall accept such manually issued Form-C not uploaded on TINXSYS software but filled up in accordance with the Act and Rules.

10. It is pointed out by learned counsel for the petitioner that since January, 2014 the authorities of the Railway have compelled the petitioner to deposit the difference of amount of Tax as also Bank Guarantee. The authorities of the respondent Railways are directed to refund the same within a period of two months from the date of receipt/production of a copy of this order.

11. It is clarified that the procedure so far as the manually issued forms not uploaded on TINXSYS software are concerned to be followed by the dealers as also the authorities of the Department shall be as was being followed earlier before introduction of TINXSYS

software with respect to such forms.

12. With the aforesaid observations and directions, the writ application is allowed.

(Ramesh Kumar Datta, J)

(Vikash Jain, J)

spal/-

U			