IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 3.2.2015.

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.2524 of 2015
and
M.P.No.1 of 2015

Tata Global Beverages Limited
Represented by its Manager (Finance)
S.Krishna Iyer
Valparai Coimbatore District. ...Petitioner

vs.

The Commercial Tax Officer
Valparai Coimbatore District ...Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the records on the files of the Respondent herein in his CST 319041/2012-13 dated 23.12.2014 and to quash the same with the direction to consider the declaration forms in Form C & F covering transactions to an extent of Rs.18,22,54,687/-.

For Petitioner : Mr.N.Inbarajan

For Respondents : Mr.Manohar Sundaram, AGP (T)

ORDER

Petitioner has come forward with the aforesaid prayer.

2. The authority has proceeded to pass the impugned order of assessment dated 23.12.2014 when the petitioner has produced forms 'C' and 'F' on 23.12.2014 and that has been brought to his attention. When the petitioner sought for re-opening of the assessment to admit the aforesaid forms, the authority did not consider the request.

3. It is not in dispute that the authority has got powers to extend the time for filing forms 'C' and 'F'. For the sake of convenience, sections 6 and 8 of Central Sales Tax Act and Rule 12(1) and (7) of the Central Sales Tax (Registration and Turnover) Rules, 1956 are extracted below:-

> "6. Liability to tax on inter-State sales [(1) Subject to other provisions contained in this Act, every dealer shall, with effect from such date as the Central government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, be liable to pay tax under this act on all sales of goods other than electrical energy effected by him in the course of inter-state trade or commerce during any year on and from the date so notified.
>
> Provided that a dealer shall not be liable to pay tax under this Act on any sale of goods which, in accordance with the provisions of sub-section 3 of section 5 is a sale in the course of export of those goods out of the territory of India.
>
> [1 A] A dealer shall be liable to pay tax under this Act on a sale of any goods effected by him in the course of inter-state trade or commerce not withstanding that no tax would have been leviable (whether on the seller or the purchaser) under the sales tax law of the appropriate State if that sale had taken place inside the State.
>
> [2] Not withstanding anything contained in sub-section (1) or sub-section (1A), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods-
>
> (A) to the Government, or (B) to a registered dealer other than the government , if the goods are of the description referred to in sub-section (3) of Section 8, shall be exempt from tax under this Act;
>
> Provided that no such subsequent sale shall be exempt from tax under the sub-section unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time or within such further time as that

authority may, for sufficient cause, permit,-

(a) a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in a prescribed form obtained from the prescribed authority; and

(b) If the subsequent sale is made (i) to a registered dealer, a declaration referred to in clause (a) of subsection(4) of section 8, or (ii) to the Government, not being a registered dealer, a certificate referred to in clause (b) of sub-section (4) of Section 8 ;

Provided Further that it shall not be necessary to furnish the declaration or the certificate referred to in clause (b) of the preceding proviso in respect of a subsequent sale of goods ,if, -

(a) the sale or purchase of such goods is, under the sales tax law of the appropriate State, exempt from tax generally or is subject to tax generally at a rate which is lower than four percent. (Whether called a tax or fee or by any other name); and

(b) the dealer effecting such subsequent sale proves to the satisfaction of the authority referred to in the preceding proviso that such sale is of the nature referred to in clause (a)or clause (b) of this sub-section.

(3) Not withstanding anything contained in this Act, if -

(a) any official or personnel of -

(i) any foreign diplomatic mission or consulate in India ; or

(ii) the United nations or any other similar international body, entitled to privileges under any convention to which India is a party or under any law for the time being in force ; or (b) any consular or diplomatic agent of any mission, the United Nations or other body referred to in sub -clause (i) or sub-clause (ii) of clause (a). Purchases any goods for himself or for the purposes of such mission, United nations or other body, then, the Central Government may, be notification in the Official Gazette, exempt, subject to such conditions as may be specified in the notification, the tax payable on the sale of such goods under this Act."

Rule 12(1) and (7) of the Central Sales Tax (Registration and Turnover) Rules, 1956 reads as follows:-

"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.

.....

(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."

4. The assessing officer cannot deny the request to re-open the case of the petitioner that higher rate of tax, than that has been prescribed under section 8(1), has been levied in the absence of forms 'C' and 'F' that have been produced subsequently. The authority shall not deny the request of the petitioner for re-opening the final assessment and only thing he has to consider is as to whether sufficient cause for re-opening the assessment or not. That apart, there is no proposal for levying penalty and the authority has proceeded to impose the penalty and notice informing the same was also. The petitioner is also supported by the decision of this court in VISPRO FOUNDRY ENGINEERS LIMITED v. COMMERCIAL TAX OFFICER, ADYAR ASSESSMENT CIRCLE, MADRAS. ((1991) Vol.81 STC 169). Therefore, the

petitioner's request that the respondent shall consider the declaration under forms 'C' and 'F' covering the transactions to the extent of Rs.18,22,54,687/= may be looked into by the authorities concerned. Since the authority has not taken into consideration the forms and that there was no proposal to levy penalty which has been done without giving opportunity to be petitioner and that the provisions mentioned supra clearly contemplate that an opportunity should be given to the petitioner.

5. In view of the above, the writ petition is allowed. The impugned order is quashed. The authority shall give opportunity to the petitioner and consider his request and pass order afresh on merits and in accordance with law. No costs. The connected miscellaneous petition is closed.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar.

To

The Commercial Tax Officer
Valparai Coimbatore District

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.5359
+1cc to the Special Government Pleader, S.R.No.5662

W.P.No.2524 of 2015

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