IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 8.7.2015

CORAM

THE HON'BLE MR.JUSTICE R.SUDHAKAR
AND
THE HON'BLE MRS.JUSTICE S.VIMALA

W.P.Nos.6876, 6877 and 8727 of 2015

Lucas Indian Service Limited
Shanthi Complex, R.S.No.146/1, 164/2
New No.392, Vazhudavur Road
Puducherry
rep. by Authorised Signatory. .. Appellant in W.P.No.6876, 6877 and W.P.8727/2015

Vs.

The Commercial Tax Officer-I
Commercial Taxes Complex
Puducherry - 605 005. .. Respondent in W.P.6876, 6877 and W.P.8727/15

PRAYER in W.P.No.6876 of 2015: Petition under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus to call for the records of the respondent in No.34320015516/11/2012-13 culminating in his proceedings No.3478/CTO-I/2014-2015 and quash the orders dated 10.2.2015 and dated 25.2.2015 respectively passed therein and further direct the respondent to accept the manual filing of declaration forms by the petitioner.

PRAYER in W.P.No.6877 of 2015: Petition under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus to call for the records of the respondent in No.34320015516/11/2011-12 culminating in his proceedings No.3478/CTO-I/2014-2015 and quash the orders dated 10.2.2015 and dated 25.2.2015 respectively passed therein and further direct the respondent to accept the manual filing of declaration forms by the petitioner.

PRAYER in W.P.No.8727 of 2015: Petition under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus to call for the records of the respondent in No.34320015516/2013-14 and quash the order dated 25.2.2015 passed therein and further direct the respondent to accept the manual filing of declaration forms by the petitioner.

For Petitioner : Mr.Ramani, Sr. Counsel for Mr.B.Raveendran

For Respondent : Mr.R.Mala Addl. Government Pleader (Puducherry)

O R D E R

(Made by R.SUDHAKAR, J.)

The petitioner has filed these writ petitions for issuance of writ of Certiorarified Mandamus to (i) call for the records of the respondent in No.34320015516/11/2012-13 culminating in his proceedings No.3478/CTO-I/2014-2015 and quash the orders dated 10.2.2015 and dated 25.2.2015 respectively passed therein and further direct the respondent to accept the manual filing of declaration forms by the petitioner (W.P.No.6876/2015); (ii) call for the records of the respondent in No.34320015516/ 11/2011-12 culminating in his proceedings No.3478/CTO-I/2014-2015 and quash the orders dated 10.2.2015 and dated 25.2.2015 respectively passed therein and further direct the respondent to accept the manual filing of declaration forms by the petitioner (W.P.No.6877/2015); and (iii) to call for the records of the respondent in No.34320015516/2013-14 and quash the order dated 25.2.2015 respectively passed therein and further direct the respondent to accept the manual filing of declaration forms by the petitioner (W.P.No.8727/2015).

2. The non filing of Form 'C' and Form 'F' declarations by the petitioner for the assessment years 2011-12, 2012-13 and 2013-14 is the bone of contention between the petitioner/ assessee and the respondents.

3. For the assessment year 2012-2013, the department issued a pre-assessment notice to the petitioner on 14.3.2014 granting time till 21.3.2014 to pay tax in the absence of furnishing of statutory declaration forms. Consequent to the same, the petitioner furnished some Form 'F' declarations and requested a month's time. Thereafter, another notice was issued by the department on 7.1.2015 granting time till 19.1.2015 to furnish the balance statutory forms or to pay the tax due. As the petitioner failed to furnish the statutory forms, the respondent on 10.2.2015 passed an assessment order along with notice in Form-3 raising demand of Rs.2,17,58,014/-. The petitioner made a request to revise the assessment order, but the same was rejected by the respondent by order dated 25.2.2015. The orders dated 10.2.2015 and 25.2.2015 are challenged in W.P.No.6876 of 2015.

4. Likewise, for assessment year 2011-2012, the department issued pre-assessment notice, granted some time to the petitioner on the request made by it and thereafter on 10.2.2015 passed an assessment order along with notice in Form-3 raising demand of Rs.9,03,305/-. The request made by the petitioner to revise the assessment order was rejected by order dated 25.2.2015. The orders dated 10.2.2015 and 25.2.2015 are challenged in W.P.No.6877 of 2015.

5. Insofar as assessment year 2013-2014 is concerned, the petitioner has challenged the assessment order dated 25.2.2015 passed by the respondent requiring the petitioner to pay the balance tax due to the tune of Rs.5,87,64,830/-. The order dated 25.2.2015 is challenged in W.P.No.8727 of 2015

6. It is the specific plea of the petitioner that the insistence on the part of the department by oral instructions to upload the statutory declaration forms and refusing to accept manual filing of hard copy of the declaration forms is causing great impediment to the petitioner/assessee, especially when the statutory provision does not mandate uploading of statutory forms electronically. It is also pleaded that there is difficulty in obtaining declaration forms from other States. It is further pleaded that since the petitioner has not paid the tax demand as claimed by the department, assessee is unable to generate Form 'C' and Form 'D' declarations online for the purpose of sending the same to other State suppliers. The same is severely affecting the business activities of the petitioner.

7. We have heard the learned Senior Counsel for the petitioner and the learned Additional Government Pleader (Puducherry) appearing for the respondent.

8. In identical circumstances, this Court in MRF Ltd. v. The Commercial Tax Officer – (IAC-I), by order dated 25.6.2015 made in W.P.No.7260 of 2015, after examining the provisions of the Sections 6A, 8(4) and 13 of the Central Sales Tax Act, 1956; Rules 5(1) and 14 (4) of the Central Sales Tax (Pondicherry) rules, 1967, and Rule 12 (1), (5) and (7) of the Central Sales Tax (Registration & Turnover Rules) held that there is no provision for the present under the Puducherry Value Added Tax Rules to submit the declaration forms in the electronic mode as has been suggested by the Department and, therefore, the department's insistence on online uploading of declarations forms is not in consonance with any of the Rules either under the Central Sales Tax Rules or Puducherry Value Added Tax Rules. That apart, it was also held that the approach of the Department should be to ensure that what the assessee is rightfully entitled to should be extended to the assessee without harping on technicalities.

9. In the light of the ratio laid down in the aforesaid decision, which is squarely applicable to the facts of the present case, these writ petitions are allowed and the impugned orders are set aside and

the Assessing Officer is directed to proceed with the assessment after receiving the statutory declarations in physical form and complete the assessment. No costs. Consequently, M.P.Nos.1 of 2015 (3 Petitions) are closed.

10. At this juncture, the learned Senior Counsel pointed out that in view of the impugned orders passed and the consequent tax liability, the Department has withheld the downloading and issuance of statutory declaration forms and thereby the entire business of the petitioner has come to a standstill causing great prejudice to the other State vendors.

11. As the impugned orders in these cases are set aside, the Department may permit the petitioner to download the statutory declaration forms. The Assessing Authority is also directed to accept the statutory declaration forms in physical form and complete the assessment expeditiously. The petitioner undertakes to co-operate for early assessment.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

sasi
To:
The Commercial Tax Officer-I
Commercial Taxes Complex
Puducherry - 605 005.

3 cc to Sr. Government Pleader-cum-Sr.PP for Puducherry.Sr.No.34372,34373 and 34374

W.P.Nos.6876, 6877 and 8727 of 2015

scd(co)
pmk.31.7.2015