In the High Court of Judicature at Madras

Dated: 25.06.2015

Coram

The Honourable Mr.JUSTICE R.SUDHAKAR
and
The Honourable Ms.JUSTICE K.B.K.VASUKI

Writ Petition No.7259 of 2015
& M.P.No.1 of 2015

M/s.Tansasia Bio-Medical Limited
represented by its Authorized Representative
Mr.Ashok Suthar,
General Manager -Taxation & Legal
R.S.No.211/4, Part Cuddalore Road,
Nainarmandapam, Murungapakkam,
Puducherry .... Petitioner

Vs.

The Deputy Commercial Tax Officer - II,
Commercial Tax Department, Puducherry. .... Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order dated February, 20, 2015 passed by the respondent with respect to assessment No.and year CST34510010125/2012-2013 and quash the same and further direct the respondent to grant an opportunity to the petitioner for re-submission of the rectified F-Forms and submission of the balance F-Forms.

For Petitioner : Mr.G.Derrick Sam
For Respondent : Mr.T.Murugesan,
Spl.G.P.-cum-Sr.Public Prosecutor
Assisted by Mrs.Mala, G.A. (Pondy)

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O R D E R

(Order of the Court was made by R.SUDHAKAR,J.)

This Writ Petition is filed by the petitioner seeking to quash the assessment order dated 20.2.2015 passed by the respondent, wherein the respondent has demanded the tax due on the ground that the petitioner had failed to furnish 'F' forms. The petitioner has also sought for a direction to the respondent to grant an opportunity to the petitioner for re-submission of the rectified 'F' Forms and the submission of balance 'F' forms.

2. The facts in a nutshell are as follows:

The petitioner is a registered dealer and is trading medical equipments, both imported as well as manufactured in India. The petitioner company has a ware house at Puducherry and majority of the sales from this warehouse is on inter-state basis. The goods, from the warehouse at Pondicherry, are also stock transferred to other states against Form - 'F'. The respondent, by notice dated 27.2.2014 calling upon the petitioner to produce the relevant 'C/F' Forms for the inter-state sales/stock transfers effected during the period April 2012 to September, 2013. In response to the said notice, the petitioner informed that they were in the process of uploading the relevant forms and sought for extension of two months to submit the necessary forms. Thereafter, the respondent issued another notice dated 27.1.2015 calling upon the petitioner to produce necessary forms. In response to the said notice, the petitioner had produced certain 'C/F' forms and sought for extension of time for production of balance 'F' forms by letter dated 06.02.2015, the details of which are as follows:

> "We have received your notice for furnishing Declaration Forms for exemptions claimed/concessional rate which re subject to production of Form C & F for the above period.
> As above, we are herewith furnishing the Original 'C' Forms 168 no's amounting to Rs.8,31,94,154/- & Original 'F' Forms 74 no's amounting of Rs.23,99,43,169/- with acknowledgement copy of online Submission of Forms.
>
> Kindly request you to allow 10 days time for submission of balance F Forms of Rs.1,92,93,360/-.
> We hope you will accede to our request." .

3. It is seen that the respondent had granted time till 12.2.2015 to submit the balance 'F' Form. On 12.2.2015, the petitioner appeared before the respondent and furnished the balance 'F' forms for the financial year 2012-13 and sought extension of time to produce the pending 'F' Forms vide letter dated 12.2.2015 on the ground that since the company having different locations and the 'F' Forms from Bihar State are awaited. For better clarity, the letter dated 12.2.2015 is extracted below:

> " Thank you for considering our request letter dated 06/02/2015 allowing only 6 days time for submission of balance F Forms. All the pending F forms are from Bihar location. Due to some technical problem we are unable to get the F form within time. Therefore, we are request you to allow some more time for submission of balance F forms preferably 3 weeks time. We are attaching herewith online F form request acknowledgement copy for your reference.

You will appreciate that company having different locations and only Bihar state's 'F' forms are awaited. We hope you will accede to our request.”

The petitioner has made an endorsement in the above-said letter, which reads as follows:

“on 18.2.2015 Mr.Govindaraj visited
“ Taking back 74 Nos. of F forms for rectification.””

4. In view of the difficulty stated in the above-said letter, the petitioner sought for three weeks time, which was declined by the authority resulting in the passing of the impugned order in question.

5. Challenging the said impugned order, the petitioner is before this Court. The primary argument of the learned counsel appearing for the petitioner is that uploading of these documents was made online at the request of the Department and there was some delay. It is also pleaded that sufficient cause was shown by the assessee, for the authority to invoke the powers under proviso to Rule 12(7) of the Central Sales Tax Act and that was rejected by the Authority at the threshold.

6. Heard learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondent.

7. We find that there is ample power for the authority to grant extension of time. In the instant case, we find that there is justification for the authority to invoke the powers under the proviso to Rule 12(7) for the reason that the petitioner had to obtain the 'F' forms from Bihar State. For better understanding, it is apposite to extract Rule 12(7) and the proviso to the said Rule of the Central Sales Tax, which reads as follows:

> “ 12.(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 with in 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 with in the aforesaid time, that authority may allow such declaration or certificate to be furnished within such further time as that authority may permit."

8. It is stated by the learned Special Government Pleader appearing for the respondent that the petitioner has an effective remedy by way of filing appeal as against the assessment order. We are not inclined to direct the petitioner to pursue the appeal

remedy, as the reason given by the petitioner appears to be bona fide and the assessee in this case, at the first instance, has submitted original 'C and F' declaration forms on receipt of the notice. He also sought time for seeking rectification of the 'F' forms and has justified the reasons for the said non-submission. Therefore, there is every justification for the Writ Petitioner to seek indulgence of this Court to quash the impugned order, which has been passed without considering the sufficient cause shown by the assessee, which has caused prejudice only on account of delay in uploading the relevant declarations.

9. In the light of the above, we are inclined to set aside the impugned order and remand the matter back to the competent authority for passing fresh orders. Learned counsel appearing for the assessee undertakes to produce all the declaration forms required for the assessment year in question along with a copy of this order within 15 days from the date of receipt of a copy of this order.

10. In the result, the impugned order stands set aside and this Writ Petition stands allowed. The Assessing Officer is directed to proceed with the assessment after receiving the statutory declarations in physical form and complete the assessment on merits. No costs. Consequently, M.P.No.1 of 2015 is closed.

sl

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

The Deputy Commercial Tax Officer - II,
Commercial Tax Department, Puducherry.

+ 1 cc to Mr.Hari Radhakrishnan, Advocate SR 31851

+ 1 cc to Senior Govt.Pleader cum Senior Public Prosecutor for Puducherry SR 31626

gj(co)
prk16/7

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