IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1067 OF 2016

M/s. Solcon Engineers Private Limited .... Petitioners
Vs.
Union of India & Others .... Respondents

Mrs. Lata Desai with Dr. Pallavi Divekar and Ms Ashwini Pawar i/by Divekar & Co. for the Petitioners.
Mr. N.D. Deshpande, AGP, for Respondent Nos.2 to 4.

**CORAM:** S.C. DHARMADHIKARI &
G.S. KULKARNI, JJ.

**DATE :** APRIL 12, 2016

**P.C:**

1. By this petition under Article 226 of the Constitution of India, filed on 17-6-2015, the petitioners seek a writ of mandamus or any writ, order or direction in the nature thereof directing the respondent No.5 to issue "C" Forms to the petitioners as per Section 8 of the Central Sales Tax Act, 1956 and Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957.

2. Mrs. Lata Desai, appearing on behalf of the petitioners, would submit that a writ petition under Article 226 of the Constitution of India, seeking the above relief, is maintainable even against the respondent No.5, which is a Public Limited Company, incorporated and registered under the Indian Companies Act, 1956, as that company has failed to perform a statutory obligation and duty. The respondent No.5 are purchasers. On 30-4-2008, they placed an order with the petitioners for certain goods. According to the petitioners, on receipt of this purchase order dated 30-4-2008 and relying upon its Clauses, supply of goods commenced on 11-11-2008 and was completed on 6-3-2010. The payment was made by the purchasers. However, the purchasers failed to supply the "C" Forms. The details of the Form and the reasons for which that was sought are set out in paras 5 to 7 of the petition.

3. It is stated that from 2010 to 2014 the respondent No.5 assured the petitioners that it would forward the "C" Forms, but the same were not forwarded. The petitioners received an assessment notice for the differential amount, in lieu

of non-issuance of “C” Forms for the year 2008-2009 and 2009-2010, of Rs.26,16,991/-. On receipt of the same, once again the request was renewed but because the respondent No.5 failed, the order of assessment was passed and assessing the tax liability.

4. The petitioners apprehending recovery of the amount under the assessment order, firstly, approached the respondent No.5 and thereafter filed this writ petition.

5. Reliance is placed on the Judgments of the Hon'ble Supreme Court, and particularly that of a Division Bench of the High Court of Andhra Pradesh at Hyderabad in the case of **Modern Proteins Ltd. Vs. Food Corporation of India**, reported in Vol.52 Sales Tax Cases 403 and that of a learned single Judge of Gauhati High Court in the case of **OMIL-JSC-JV Vs. Union of India and others**, reported in (2013) 61 Value and Sales Tax Cases 370 (Gau.).

6. Upon hearing Mrs. Desai and perusing the petition with her assistance, we are unable to agree with her that in writ

jurisdiction we should entertain a request and of this nature after more than seven years of the date of issuance of the purchase order and nearly five years from the date the supply was completed. The writ petitioners entered into a commercial transaction with the respondent No.5. If the commercial terms were adhered to and that resulted in a tax liability, the petitioners could have very well recovered the differential amount by bringing a civil suit. To get over that defect and lacuna by some correspondence and oral request, the writ petition is filed, and that too belatedly.

7. Assuming that such a writ petition was entertained by the High Court of Andhra Pradesh and the Gauhati High Court, that was in the peculiar facts. In the case before the High Court of Andhra Pradesh, the entity was Food Corporation of India (FCI), which is otherwise also covered by Article 12 of the Constitution of India or the latter part of Article 226. It is no doubt performing a public duty, even in matters of contract, therefore, it could have been sued in writ jurisdiction. Apart therefrom, the Division Bench of the High Court of Andhra

Pradesh held that the stand of the FCI was untenable. It refused to issue the "C" Form, though statutorily obliged on the flimsy ground that the price that the supplier charged was inclusive of sales tax. It is the legality of that ground together with the status of the FCI which enabled the High Court of Andhra Pradesh to entertain the writ petition and issue the mandamus. There does not appear to be any objection and ground of unreasonable and unexplained delay.

8. Similarly, in the case before the single Judge of the Gauhati High Court, the obligation was not discharged by another State entity. The Gauhati High Court noted that though the transaction fell within the purview of Section 8(1) of the Central Sales Tax Act, 1956 and Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 will have to be complied with, the dealer's request for issue of "C" Form against materials despatched was not attended to. The Corporate Taxation Cell of the respondent before the Gauhati High Court, to which the request was made over, communicated that it would not issue the "C" Form since there was no provision in the

contract agreement. Therefore, and it is in these circumstances, that when the authority who was proposing to levy penalty for non-payment of tax that the request was granted. It was found that there was no dispute on facts either.

9. Assuming in the present case a writ petition could be entertained, still we do not find that on the one sided version of the petitioners we can direct the respondent No.5 to issue any such “C” Form and in relation to a transaction concluded as far back as in 2010. We have found from the entire petition and its annexures that the petitioners having met the tax liability and also obtained the benefit of an adjustment for future, do not deserve any discretionary and equitable relief in our writ jurisdiction. It may be that there is an obligation to issue the Form, but having found that such a request is made belatedly and is barred by delay and laches, and secondly, it is only on the version of the petitioners that we decline to exercise our writ jurisdiction. The writ petition is dismissed.

(G.S. KULKARNI, J.) (S.C. DHARMADHIKARI, J.)