In the High Court of Judicature at Madras

Dated : 09.11.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.8798 of 2014 & MP.No.1 of 2014

Standard Machinery Sales
Company, NO.548, Anna Salai,
Chennai-18. ...Petitioner

Vs

The Assistant Commissioner (CT),
T.Nagar (East) Assessment Circle, Greenways Road,
Chennai-28. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent in his assessment order in CST/619167/2008-09 dated 30.3.2012, quash the same as illegal, unlawful and arbitrary in nature and direct the respondent herein to consider the judgment reported in 83 STC Page 116 in the case of Manganese Ore (India) Ltd Vs The Commissioner of Sales Tax [Madhya Pradesh High Court (Division Bench)] and to accept the duplicate C forms and pass revised order in accordance with law.

For Petitioner : Mr.R.Ganesh Kanna
For Respondent : Mr.S.Kanmani Annamalai, AGP

ORDER

Heard both.

2. The petitioner is a dealer in lithographic plates and densitometers, registered on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956. The petitioner challenged the impugned order dated 30.3.2012 passed under the provisions of the Central Act.

3. The grounds of challenge are that the respondent failed to take into consideration the duplicate part of the C-Forms produced by the petitioner while assessing the petitioner's turnover and therefore, had not extended the benefit of concessional rate of tax. The petitioner specifically stated in paragraph 6 of the affidavit in support of the writ petition that they produced original C-Forms before the respondent on 20.9.2010, but the respondent lost the same.

4. This contention has been specifically denied by the respondent in the para wise remarks given by the respondent to the learned Additional Government Pleader dated 21.5.2014.

5. Be that as it may, what is to be seen is as to whether the respondent proceeded to complete the assessment by not considering the duplicate part of the C-Forms. It is not in dispute that the duplicate part of the C-Forms is not a photostat copy of the C-Forms, but one of the portions of the C-Form, which consists of duplicate, original and counterfoil. The counterfoil will be retained by the purchasing dealer in the other State. The duplicate and original will be forwarded to the selling dealer in the State of Tamil Nadu, which is required to be produced before the Assessing Officer to be entitled for concessional rate of tax. However, if the original, which is to be submitted to the Department, is lost, then the assessee need not be denied the benefit of the concessional rate of tax. The genuineness of the assessee's claim can very well be verified from the duplicate part of the C-Form.

6. The Hon'ble Division Bench of the Madhya Pradesh High Court in the case of Manganese Ore (India) Ltd. Vs The Commissioner of Sales Tax [reported in (1991) 83 STC 116] considered an identical issue and held that where the dealer filed the duplicate part of Form C instead of the original, there was sufficient compliance with the provisions of Section 8 (4) of the Central Act and those of Rule 12(1) of the Central Sales Tax (Registration and Turnover) Rules, so as to entitle the dealer to get the benefit of concessional rate of tax under Section 8(1) of the Central Act.

7. At this juncture, it will be beneficial to extract the relevant portion of the said judgment of the Hon'ble Division Bench of the Madhya Pradesh High Court, which reads as follows :

> "It would, thus, appear that in order to obtain the benefit of Section 8(1) of the Central Act, the dealer has to comply with the provisions of Section 8(4) thereof by filing a declaration in Form C in terms of Rule 12(1) of the Central Rules. In the present case, though the assessee did not file the 'original' part of the Form C, it did file the 'duplicate' part of the form. As pointed out earlier, Form C consists of three parts : "original", "duplicate" and "counterfoil". All the three parts are identical in terms and they all form part of Form C. It must, therefore, follow that the declaration in C Form was furnished, but instead of submitting that part of the form which contained the word "original" and which was meant for being filed before the Assessing Authority, another part of the form, marked "duplicate", was filed. Section 8(4) or Rule 12(1) does not say which part of the form was required to be filed before the Assessing Authority. It is the form

itself, which by use of the words "original", "duplicate" and "counterfoil", gives an indication as to which part of the form is required to be filed before the Assessing Authority. In the light of these facts and the provisions of law, we are of the view that there was sufficient compliance with the provisions of Section 8 (4) of the Central Act and those of Rule 12 (1) of the Central Rules, so as to entitle the assessee to get the benefit of concessional rate of tax under Section 8(1) of the Central Act."

8. In the light of the above, this Court is of the view that the petitioner's case can be considered by taking into account the duplicate part of C-Form instead of the original.

9. Accordingly, the writ petition is allowed, the impugned order is set aside and the matter is remitted back to the respondent for fresh consideration. The respondent shall take note of the duplicate part of the C-Form instead of the original part, examine the correctness of the same and proceed further in accordance with law. No costs. Consequently, the above MP is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To
The Assistant Commissioner (CT), T.Nagar (East) Assessment Circle, 48, Greenways Road, Chennai-28.

+1 cc to Spl.Govt.Pleader,sr.64656.

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and MP.No.1 of 2014