HON'BLE SRI JUSTICE G. CHANDRAIAH
&
HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

W.P. No. 36051 of 2015

DATE: 04.03.2016

Between:

Kumar's Metallurgical Corporation Ltd. .. Petitioner

and

The State of Telangana
and two others
..Respondents

O R D E R:-(per Hon'ble Sri Justice G. Chandraiah)

This writ petition is filed for the following substantive relief:

a) declare the action of the respondents-authorities in blocking TIN Number of the petitioner-company from accessing the facility i.e. the website of the respondents-authorities (www.tgct.gov.in) for issuing statutory "C" Declaration Forms/Way-bills to its sellers as illegal, arbitrary, contrary to law and also in violation of principles of natural justice; and

b) direct the respondents-authorities to unblock TIN Number of the petitioner-company forthwith on the website of Commercial Tax Department, thereby enabling it to issue statutory "C" Declaration Forms/Way-bills to its sellers by accessing the website of the respondents-authorities (www.tgct.gov.in); and

c) consequently, direct the 3rd respondent to issue "C" Declaration Forms/Way-bills to the sellers of the petitioner-company as requested by the petitioner-company vide its representation dated 05.10.2015."

The case of the petitioner-company, represented by its authorized representative – Mr. S.Sudhir Reddy, is that he is working as Manager(Purchase) of the petitioner-company which is a registered dealer under both the Telangana Value Added Tax Act, 2005 & the Central Sales Tax Act, 1956 with TIN No. 36430156641 and the company is involved in the manufacture/production of sponge iron by acquiring requisite raw materials i.e. iron ore and coal from various sellers. The petitioner regularly paid all statutory taxes from 1990 onwards, however, owing to financial difficulties, the petitioner sustained losses in business and has fallen due in payment of arrears of tax since 2003 and the respondents have initiated legal action for recovery of dues. While so, it is stated that the petitioner, being purchaser of the raw material from various sellers, is entitled to issue "C" Declaration Forms/Way-bills to its sellers by applying online through the website of the Commercial Taxes Department i.e. www.tgct.gov.in. Now, the petitioner's grievance is that when a request was made online to the Department through its website in October, 2015 for issuance of statutory "C" Declaration/Way-bills to its sellers, the same was not accepted by the Department and without there being any notice to the petitioner, TIN Number of the petitioner was shown as "blocked" because of non-payment of taxes, thereby the petitioner has no access of facility on the website. Further, when the petitioner made a representation dated 05.10.2015 to the 3rd respondent requesting him to unblock TIN number of the company so as to enable him to generate "C" Declaration Forms/Way-bills to be issued to their suppliers, the respondents-authorities, have neither considered and passed any orders on the representation nor issued “C” Declaration Forms / Way-bills to the sellers by releasing the TIN Number. Hence, the present writ petition is filed seeking appropriate directions.

The learned counsel for the petitioner has submitted that merely because the petitioner has fallen due in payment of tax due to financial crisis since 2003, the action of the respondents-authorities in blocking the TIN Number of the petitioner without taking into consideration the prompt payments made by the petitioner earlier and the fact that issuance of “C” Declaration Forms / Waybills to the sellers is essential and non-consideration of the representation made by the petitioner so far, is arbitrary and illegal. In support of his contention, he has placed reliance on the decision rendered by a Division Bench of this Court in W.P. No. 39097 of 2013, wherein, this Court, while referring to a judgment, allowed the writ petition directing the respondents therein to supply statutory “C” Declaration Forms/Way-bills and also held that the order does not preclude the respondents from initiating appropriate proceedings for recovery of tax arrears, if any. Hence, the learned counsel prays that the writ petition may be allowed.

On the other hand, the learned Special Standing Counsel for Commercial Taxes appearing on behalf of the respondents has submitted that the petitioner is a defaulter in payment of arrears of tax since 2003 and he is also avoiding payments, therefore, the respondents have initiated proceedings for recovery of taxes and he has also submitted that the Department can block the TIN Number of the petitioner, as such, the writ petition is liable to be dismissed.

We have perused the material placed on record.

The factual aspects of the matter are not in dispute. The main grievance of the writ petitioner is that their sellers are not issued “C” Declaration Forms / Way-bills on the ground that their TIN Number is blocked by the respondents. As contended by the learned counsel for the petitioner, this Court, in the case of **Sri Kamadhenu Khadi and Village Industries Welfare Society, Kolluru v. Commercial Tax Officer, Tenali**[1] which is referred in W.P.No. 39097 of 2013, while answering the question whether it is competent to the Commercial Tax Officer to deny the way-bills to compel the payment of tax arrears, observed as under:

> “Inasmuch as the issuance of the way-bills depends upon the payment of costs; under Rule 45 of the Andhra Pradesh General Sales Tax Rules, 1957, payment of tax is not one of the conditions prescribed in those Rules. Therefore, in our view, the defence taken by the respondent is untenable.
>
> We may also point out here that in M/s.Dabur India Limited V. State of U.P.(1) AIR 1990 Supreme Court 1814, the Supreme Court observed that the Government should not take extra-legal steps or manoeuvre to coerce citizens to make payment which they are not legally obliged to make. Relying on the observation of the Supreme Court, the learned counsel for the petitioner submits that as the petitioner is exempted from payment of tax, non-issuance of the way bills is illegal. We do not consider it necessary to go into the exemption of tax. In

view of the above observations of the Supreme Court, even if any tax is due from the petitioner, denial of the way bills is not the proper way to recover the tax."

In view of the observations made by the Supreme Court as extracted above, this Court categorically held that even if any tax is due from the petitioner, denial of the way-bills is not the proper way to recover the tax.

Having regard to the facts and circumstances of the case and following the judgment dated 12.03.2014 passed by this Court in W.P.No. 39097 of 2013, we are of the considered view that the action of the respondents-authorities in blocking the TIN Number of the petitioner-company from accessing the facility i.e. the website of the respondents-authorities (www.tgct.gov.in) for issuing the statutory "C" Declaration Forms / Way-bills to its sellers even if tax is due from the petitioner, is not proper.

Hence, the respondents-authorities are directed to consider the representation dated 05.10.2015 said to have been made by the petitioner-company and pass appropriate orders thereon forthwith in accordance with law.

Subject to the above observation, the writ petition is partly allowed. No order as to costs.

As a sequel to the allowing of the writ petition in part, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

G. CHANDRAIAH, J

04.03.2016

A. SHANKAR NARAYANA,J

bcj

[1] (1996) 23 APSTJ