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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 8272/2015 & CM No. 17432/2015 (for stay)

INGRAM MICRO INDIA PVT. LTD.

..... Petitioner

Through: Mr. Balbir Singh, Senior Advocate with
Mr. Krishnamohan Menon, Ms. Rubal Maini,
Mr. Ujjwal Parera and Mr. Gautam Dhamija,
Advocates.

versus

**COMMISSIONER, DEPARTMENT OF TRADE & TAXES
& ANR.**

..... Respondents

Through: Mr. Sanjay Ghose and Ms. Pratishtha
Vij, Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE VIBHU BAKHRU

ORDER

01.02.2016

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Dr. S. Muralidhar, J.:

1. This is a writ petition under Article 226 of the Constitution by Ingram Micro India Pvt. Ltd. ('IMIPL') which is registered as a dealer under the Delhi Value Added Tax Act, 2004 ('DVAT Act') and also under the Central Sales Tax Act, 1956 ('CST Act'). The registration certificate of the Petitioner permits it to deal with electronic goods within the state of Delhi and also undertake inter-state sales and purchases.

2. The challenge in the present petition is to an order dated 12th June 2015 issued by the Assistant Commissioner, Department of Trade & Taxes, Government of National Capital Territory of Delhi ('GNCTD') (Respondent No. 2 herein) rejecting the request made by the Petitioner for issuance of C-Forms in relation to the inter-state purchases made by the Petitioner during the third and fourth quarter of Financial Year ('FY') 2010-11.

3. Earlier by an order dated 28th May 2015 in Writ Petition (C) No. 5836 of 2015, Respondent No. 2 was asked to dispose of the representation made by the Petitioner on 26th May 2015 in accordance with law. Pursuant thereto the impugned order was issued. Ten reasons have been given in the impugned order for rejecting the Petitioner's request. In short, it is stated that purchases in the sum of Rs. 4,35,62,335 and Rs. 1,61,49,137 in the third and fourth quarters respectively of FY 2010-11 were not shown in the returns or even in the revised returns filed by the Petitioner for those relevant tax periods. Further, the purchases were not entered in the purchase register to be maintained in Form DVAT-30; the purchases were not shown in the documents produced before the Special Auditor when a special audit was conducted for FYs 2010-11 and 2011-12; at the time of passing of the assessment order on 31st January 2015 no declaration was made regarding the said purchases; the bank statements and stock registers were not produced in the course of the hearing pursuant to the order of this Court.

4. Writ Petition (C) No. 5836 of 2015 was disposed of on 28th August 2015 in view of the impugned order having been passed. On that day, notice was issued in the present petition. A reply thereto has been filed by the

Respondents.

5. This Court has heard the submissions of Mr. Balbir Singh, learned Senior counsel appearing for the Petitioner and Mr. Sanjay Ghose, learned counsel for the Respondents.

6. In terms of Section 8 (1) of the CST Act, a dealer selling in the course of inter-state sales to another registered dealer goods answering the description in terms of Section 8(3) of the Act, is liable to pay 2% tax or the rate applicable to intra-state sales whichever is low. In terms of Section 8(4) of the CST Act it is mandatory for the selling dealer to furnish to the prescribed authority a declaration in C-Form to be furnished by the purchasing dealer. The C-Form has to be obtained from the sales tax authority of the concerned purchasing dealer and furnished to the selling dealer.

7. Under The Central Sales Tax (Delhi) Rules, 2005 ('CST Delhi Rules') there are provisions regarding the obtaining and furnishing of C-Forms. Rule 5 (1) to (4) of the CST Delhi Rules which is relevant for the purposes of present case reads as under:

"5. Authority from which Declaration Form 'C' may be obtained, use, custody and maintenance of records of such forms and matters incidental thereto.

(1) A registered dealer, who wishes to purchase goods from another such dealer, on payment of tax at the rate applicable under the Act, to sales of goods by one registered dealer to another, for the purpose specified in the purchasing dealer's certificate of registration, shall obtain from the Commissioner the blank Declaration Form, that is to say Form 'C' referred to in Rule 12 of the Central Rules, for

furnishing it to the selling dealer. Before furnishing the Declaration to the selling dealer, the purchasing dealer, or any person authorised by him in this behalf, shall fill in all required particulars in the Form, and shall also affix his usual signature in the space provided in the form for this purpose. Thereafter, the counterfoil of the Form shall be retained by the purchasing dealer and the other two portions marked "Original" and "Duplicate" shall be made over by him to the selling dealer.

PROVIDED that the counterfoils of the Declaration Forms should be maintained by the dealer for a period of five years or such further period as may be prescribed by the Commissioner.

(2) For obtaining a blank Declaration Form 'C' referred to in sub-rule (1) from the Commissioner, a registered dealer shall apply for issue of Forms to the Commissioner in Form '2C' whenever such forms are required and shall affix court fee stamp at the rate of fifty paise per Form on the application.

PROVIDED that for obtaining blank declaration Form 'C' for the transactions prior to 1st October, 2005, a registered dealer shall submit a requisition account of declaration forms in Form '2A' together with his last return for the year 2005-06 or by such date as may be notified by the Commissioner in this regard.]

[(3) If the applicant for Declaration Forms has, at the time of making the applications, failed to comply with an order demanding security from him under sub-section (3A) of section 7 of the Act, the Commissioner shall reject the application.]

[(4) If the applicant for Declaration Form 'C' has, at the time of making the application-

(i) defaulted in furnishing any return including reconciliation return or returns in accordance with the provisions of law or in payment of tax due according to such return; or

(ii) defaulted in making the payment of the amount of tax assessed,

re-assessed or the penalty imposed by the Commissioner under the Delhi Value Added Tax Act, 2004 or under the various Acts repealed as per section 106 of the Delhi Value Added Tax Act, 2004 or the Central Sales Tax Act, 1956 and in respect of which no orders for installment/stay have been obtained from the competent authority under the provision of law; or

(iii) not filed proper utilization account in Form '2B', of Forms issued to him earlier; or

(iv) some adverse material has been found by the Commissioner suggesting any concealment of sale or purchase or furnishing inaccurate particulars in the returns;

the Commissioner shall, after affording the applicant an opportunity of being heard, withhold, for reasons to be recorded in writing, issue of Declaration Form 'C' to him:

PROVIDED that the Commissioner may, after affording the applicant an opportunity of being heard, withhold, for reasons to be recorded in writing, issue of declaration Form 'C' for transactions prior to 1st October, 2005 to him if the applicant has not filed proper requisition account for such declaration forms or the applicant has not filed proper utilization account in Form 2B of the Forms issued to him earlier:

PROVIDED FURTHER that the Commissioner may instead of withholding Declaration Form 'C' to the applicant, issue such forms in such numbers and subject to such conditions and restrictions, as he may consider necessary.

PROVIDED ALSO that notwithstanding the provisions of any other rule the issue of Declaration Form 'C' to a dealer to whom a certificate of registration under the Act has been granted for the first time, shall be withheld by the Commissioner, until such time as all the returns for the return period commencing from the date of validity of the certificate of registration are furnished and tax due according to such return/returns is paid by him:

PROVIDED ALSO that for the transactions prior to 1st October, 2005, the Commissioner may, subject to such conditions and restrictions as may be imposed, issue declaration forms to an applicant even if he has not filed proper utilization account in Form '2B' of forms issued to him in respect of the transactions subsequent to 30th September, 2005.]”

8. In terms of Rule 5 (2) a request has to be made in Form-2C by the dealer desirous of obtaining C-Forms to the Commissioner of the Department. Inter alia, in the said Form, the dealer declares that “due return(s) have been filed for all quarters/months till (mention period ending) and the tax due as per return has been paid”. As is evident from Rule 5 (2) even blank C-Forms can be obtained in anticipation of inter-state sales. Secondly, there is no time limit prescribed under the CST Delhi Rules for issuance of C-Forms.

9. Under Rule 5(4) there are four contingencies when a request made for issuance of a C-Form may be refused by the Commissioner, after affording the applicant an opportunity of being heard, for reasons to be recorded in writing. Under Rule 5 (4) (i), C-Forms can be refused where the dealer has defaulted in furnishing a return, including a reconciliation return or returns in accordance with the provisions of law or in the payment of tax due according to such return. Under Rule 5(4)(iv), C-Forms can be refused if some adverse material is found by the Commissioner suggesting any “concealment of sale or purchase or furnishing inaccurate particulars in the returns”. The second proviso to Rule 5 (4) indicates that a Commissioner may issue C-Forms in such numbers and subject to such conditions and restrictions as he may consider necessary instead of withholding the C-

Form.

10. The difficulties in obtaining of C-Forms by the selling dealer from the purchasing dealer is acknowledged in the Central Sales Tax (Registration & Turnover) Rules, 1957 ('CST Rules, 1957'). Rule 12 (7) of the CST Rules, 1957 requires the selling dealer to furnish the declaration in Form-C to the prescribed authority "within three months after the end of the period to which the declaration or the certificate relates". However, the proviso to Rule 12 (7) of the CST Rules, 1957 states that if the prescribed authority is satisfied that the selling dealer was "prevented by sufficient cause for furnishing such declaration or certificate within the aforesaid time" the authority may allow further time to the selling dealer to furnish such declaration "as that authority may permit". A collective reading of the aforementioned rules reflects the intention of not specifying a rigid and inflexible time limit for furnishing a C-Form. In any event, as far as a purchasing dealer making a request for issuance of C-Forms under the CST Delhi Rules, there appears to be no such inflexible condition as to the time within which the request should be made.

11. The central thrust of the submission by Mr. Ghose on behalf of the Respondents has been that the issuance of C-Form is integrally connected to the purchase figures as disclosed by the purchasing dealer in his returns and no C-Form can possibly be issued in respect of inter-state purchases which have not been reflected in the returns of the dealer. The submission is that notwithstanding that there might be no loss of tax revenue, the issuance of C-Forms to a dealer who has not cared to disclose the corresponding inter-

state transactions in his returns would set a bad precedent and make the administration of tax collection extremely difficult for the Department.

12. In the present case, the Petitioner is candid that it made a genuine mistake in the figures disclosed in its revised returns for inter-state purchases made by it. It is pointed out that although in the original returns disclosures were made of inter-state purchases, there was a mistake owing to the wrong understanding by the Petitioner of the purchases that pertained to the FY 2010-11. It is stated that the Petitioner went by the date of delivery of the goods rather than the dates of invoices as the date of sale. In the original return filed, the figures mentioned for the inter-state purchases made during the months of October 2010 to March 2011 were shown as Rs. 168,27,55,275 and after realising the aforementioned mistake it was corrected as Rs. 159,21,63,988 in the revised return filed. But apparently this too was not correct. It is stated that on account of clerical mistake made at the stage of filing the revised return, inter-state purchase transactions of the value of Rs. 5,97,11,472 were not reflected in the revised returns although they did form part of the original returns. The net result is that there were inter-state purchases made to the extent of Rs. 5,97,11,472, in respect of which the Petitioner was entitled to C-Forms, which were however not reflected in its revised returns.

13. Turning to the reasons for rejection of the Petitioner's request as listed out in the impugned order dated 12th June 2015 it is seen that one reason is the failure by the Petitioner to disclose the above purchases in the purchase register required to be statutorily maintained by it in Form DVAT-30. It is

pointed out by Mr. Balbir Singh, learned Senior counsel appearing for the Petitioner, that Form DVAT-30 is maintained both month-wise as well as yearly and if the purchase register for the entire FY 2010-11 is examined, the purchases which were not included in the revised return would be accounted for. Indeed it appears that when the impugned order refers to purchase register for the relevant period, it is talking of the entries in months of October 2010 to March 2011, whereas according to the Petitioner the purchase register for the entire FY 2010-11 ought to have been examined. In ground (iv) of the writ petition, the Petitioner explains this as under:

“It is submitted that the details of the disputed transactions were always present (since inception) in the registers which are maintained in the e-form in an MS Excel sheet. It is submitted that it was on the suggestions of the special audit team that the details of the disputed transactions were temporarily removed from the DVAT 30 registers so as to match with the incorrectly revised returns. This was so because, the rejection of second revision was believed to be the final position by the Petitioner for a period of time.”

14. It is not the case of the Respondents that the above assertion is factually incorrect. Importantly, the Court does not find it to be the stand of the Respondents that any of the inter-state purchases, that had escaped inclusion in the revised returns, were not genuine transactions. It is the Petitioner's case that it has produced the relevant invoices, letters from the vendors seeking C-Forms and proof of payment to vendors. Importantly, the Petitioner also furnished the details of the subsequent sales relatable to the very same inter-state purchases, on which value added tax has been paid by the Petitioner. The Respondents do not state that the rejection of the Petitioner's request is on account of any fictitious inter-state purchase

transactions. There is nothing on record to indicate that ground under Rule 5(4)(iv) of the CST Delhi Rules is attracted.

15. The issue boils down to whether Rule 5(4)(i) of the CST Delhi Rules is attracted. In other words, can it be said that there was a failure on the part of the Petitioner to furnish a return, including a reconciliation return or return in accordance with the provisions of law or in payment of tax due according to such return.

16. A question was repeatedly posed to learned counsel for the Respondents whether there was any adverse impact as far as the Department was concerned if the C-Forms in respect of the aforementioned inter-state purchase transactions as requested by the Petitioner were to be furnished even at this stage. The reply was in the negative. In other words, there would be no loss of any tax revenue to the Department. At the same time, it is not denied that if the Petitioner is unable to obtain and furnish the C-Forms to its selling dealers, then it cannot take advantage of reduced rate of tax and the selling dealer is likely to pass on the burden of the differential tax to the Petitioner. In sum, the denial of C-Forms to the Petitioner would certainly be prejudicial to it.

17. Mr. Balbir Singh, learned Senior counsel appearing for the Petitioner, referred to certain decisions in the context of non-issuance of C-Forms to selling dealers where the Court appears to have taken a liberal view. For instance, in *State of A.P. v. Hyderabad Asbestos Cement Production Ltd. (1994) 5 SCC 100*, the Supreme Court favoured a liberal stand being taken by the concerned authority where sufficient cause is shown by the dealer for

not producing the C-Forms in time. Likewise, in *State of H.P. v. Gujarat Ambuja Cement Ltd. (2005) 6 SCC 499* it was emphasised that the object of Rule 12(7) of the CST Rules, 1957 “is to ensure that the Assessee is not denied a benefit which is available to it under law on a technical plea”. It was emphasised that such C-Form declarations could be filed even “before the Appellate Authority as an appeal is in continuation of the assessment proceedings”. In a given case if the Appellate Authority is satisfied that the Assessee “was prevented by reasonable and sufficient cause which disenabled him to file the Form in time, it can be accepted”.

18. On his part, Mr. Ghose drew the attention of the Court to the decision in *India Agencies (Regd.), Bangalore v. Additional Commissioner of Commercial Taxes, Bangalore (2005) 2 SCC 129* which was in the context of Central Sales Tax (Karnataka) Rules, 1957. The Supreme Court was in that case of the view that Rule 6(b)(ii) of the said Karnataka Rules had to be strictly construed and the duty of the authorities was “to simply implement it without going into the question of any hardship that may be caused even to an honest dealer”. The Supreme Court pointed out that Rule 12 of the CST Rules was intended to “prevent misuse of C-Forms by unscrupulous and mischievous dealers and makes it obligatory for the dealer to furnish indemnity bond”. The Court further emphasised that the very purpose of filing the C-Forms was that “there should not be any suppression of inter-state sales by selling dealer and evasion of tax to State from where the actual sales are effected. Secondly, the purchasing dealer also cannot suppress such purchases once he issues C-Form to the selling dealer.” The above decision in *India Agencies (Regd.), Bangalore* only serves to underscore the

essential purpose of the CST Rules which is to ensure that inter-state sale transactions are genuine and that no dealer is permitted to take benefit of a lower tax rate on a transaction which is not genuine.

19. Turning to the facts of the present case it is not the stand of the Respondents that the inter-state purchase transactions in respect of which the C-Forms are being asked for by the Petitioner are not genuine. As far as the furnishing of bank statements is concerned, it is stated that the Petitioner has by a letter dated 10th July 2015 furnished the said documents. As regards the apprehension expressed by Mr. Ghose that this would open a pandora's box and make it difficult for proper administration of collection of taxes by the Respondents, it is trite that each such request for issuance of C-Forms would have to be individually examined on a case to case basis. It is incumbent on the authority while examining such request in light of Rule 5(4) of the CST Delhi Rules to satisfy himself whether any of the grounds spelt out therein is actually attracted. In the present case there is a valid explanation offered regarding the mistake made by it in not including the aforementioned inter-state purchases in the revised returns filed. Also, the authorities appear to be satisfied that these are genuine inter-state purchase transactions with no adverse impact on the revenue of the State. Thirdly, the authority is not precluded from issuing the C-Forms subject to any condition, like the furnishing of an indemnity bond by the dealer. Indeed the Petitioner enclosed such an indemnity bond with its letter dated 10th June 2015.

20. For the aforementioned reasons, the Court holds that this was not a case where the Respondent No. 2 was justified in declining to issue C-Forms to

the Petitioner. Consequently, the impugned order dated 12th June 2015 issued by Respondent No. 2 is hereby set aside and a direction is issued to the Respondent No. 2 to issue to the Petitioner a C-Form pertaining to the aforementioned inter-state purchase transactions undertaken by it in the third and fourth quarter of FY 2010-11 within a period of three weeks from today.

21. If the Respondents desire an indemnity bond to be furnished by the Petitioner in any other format, they will communicate such requirement to the Petitioner not later than two weeks from today and proceed to issue the aforementioned C-Form not later than three weeks from today subject to the Petitioner furnishing such indemnity bond in revised format.

22. The writ petition and the application are disposed of in the above terms.

23. Order *dasti*.

S. MURALIDHAR, J

VIBHU BAKHRU, J

FEBRUARY 1, 2016

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