IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.03.2017

CORAM:

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.6906 to 6908 & 6976 to 6981 of 2017
W.M.P.Nos.7500 to 7502 & 7598 to 7603 of 2017

M/s.Diebold Systems(P) ltd,
Represented by its Assistant Manager (Commercial)
Mr. Radji Velu
... Petitioner in all WPs

Vs.

The Assistant Commissioner(CT),
Egmore Assessment Circle,
No.88, Mayor Ramanathan Road,
Chennai-31.
... Respondent in all WPs

W.P.No.6906 of 2017 is filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari, calling for the records comprised in the impugned notice of recovery dated 25.02.2017, quash the same.

W.P.No.6907 of 2017 is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondent to pass orders on the rectification application dated 27.02.2017 preferred by the petitioner.

W.P.No.6908 of 2017 is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records comprised in the impugned assessment Order dated 30.12.2016, and quash the same.

W.P.No.6976 of 2017 is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records comprised in the impugned recovery notice CST No. 615254/2013-14 dated 25.2.2017 on the file of the respondent and quash the same.

W.P.No.6977 of 2017 is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondent to pass Orders on the rectification application dated 02.03.2017 preferred by the Petitioner.

W.P.No.6978 of 2017 is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records comprised in the impugned assessment

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order dated 23.01.2017 on the file of the Respondent, and quash the same.

W.P.No.6979 of 2017 is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records comprised in the impugned notice of recovery in CST.No.615254/2014-15 dated 24.02.2017, and quash the same.

W.P.No.6980 of 2017 is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the Respondent to pass orders in the rectification application dated 27.02.2017 preferred the Petitioner.

W.P.No.6976 of 2017 is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records comprised in the impugned assessment order CST.No.615254/2014-15 dated 30.12.2016 and quash the same.

For Petitioner : Mr.Mohammed Shaffiq
(In all W.Ps')

For Respondent : Mr.K.Venkatesh,
(In all W.Ps') Government Advocate

COMMON ORDER

In all these Writ Petitions, the petitioner, who is one and the same, has challenged the order of assessment in respect of assessment years 2013-14, 2014-2015 and 2015-2016 and the consequential demand notice.

2. Mr.Venkatesh, the learned Government Advocate takes notice for the respondent in all the writ petitions and by consent of parties, the main writ petitions are taken up for final disposal.

3. it is admitted by both sides, the issue involved in these cases is covered by a decision made by this Court in W.P.Nos.40900 to 40905 of 2015 dated 23.02.2016 in favour of the petitioner.

4. Heard both sides.

5. It is seen that the impugned order of assessment followed by the impugned demand notice were issued mainly on the reason that the petitioner has not furnished C-Form and F-Form within time. This Court has already considered the issue as to whether furnishing of those forms belatedly would be a ground for rejecting the claim of the assessee in the above referred decision made in W.P.Nos.40900 to 40905 of 2015 dated 23.02.2016, wherein at paragraph Nos.7 to 11, it has been observed as follows:

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" ... 7.The Petitioner herein in these Writ Petitions, challenges the impugned orders relating to different assessment years in respect of attachment of their bank account for non-payment of tax. The claim of the Petitioner was rejected on the ground of delay in furnishing the declarations in Forms C and F. The Petitioner also made rectifications applications dated 13.07.2015 to the 1st Respondent under Section 73 of the Pondicherry Value Added Tax Act, 2007 read with Section 9(2) of the Central Sales Tax Act, 1956 in respect of the reliefs, as prayed for in these Writ Petitions.

8. Upon perusal of the Rules related to furnishing of Form C and Form F as provided under the Pondicherry VAT Rules, it is apparent that the time limit has been fixed. At the same time, it cannot be lost sight that the Central Sales Tax Rules does not provide for any time limit. Since the State being the authority to make its own Rules and the question is as to whether the Respondents would be justified in rejecting the claim of the concessional levy/exemption on the ground of non-furnishing of statutory forms within 90 days time fixed under the Act. Furnishing of the statutory forms is not within the control of the Petitioner and is dependent on the other State dealers' cooperation. If on sufficient cause, the Petitioner satisfies the requirements of law, then the claim cannot be rejected unjustifiably merely on the ground of belated submissions of statutory forms.

9. In the decision of the Full Bench of this Court reported in 51-STC-281 (State of Tamil Nadu Vs. Arulmurugan and Company), confirmed by the Honourable Supreme Court, it is stated that the belated Form C would be furnished even before the Appellate Authority on showing good sufficient reason for failure to furnish Form C, within the time limit.

10. In the above circumstances, even though the Rule prescribes time limit under the Pondicherry VAT Rules, the issue involved in these Writ Petitions is covered by the order of this court reported in 51-STC-281 (State of Tamil Nadu Vs. Arulmurugan and Company), as the Petitioner also made rectification applications, satisfied with the claim of the Petitioner, this court is of the view that the Petitioner can be given as opportunity to produce all the statutory forms for making appropriate assessment orders.

11.Accordingly, the impugned orders are quashed and the 1st Respondent is directed to consider the rectification applications of the

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Petitioner filed under Section 73 of the Pondicherry Value Added Tax Act, 2007 read with Section 9(2) of the Central Sales Tax Act, 1956 and rectify the errors, if any, on the face of the record and consider the statutory forms 'C' and 'F' filed by the petitioner online or manually, and pass appropriate orders, on merits and in accordance with law. The petitioner is permitted to produce all the statutory forms within two weeks from the date of receipt of a copy of this order and on such filing, appropriate orders be passed by the 1st Respondent within a period of six weeks from the date of receipt of the forms from the petitioner, without causing further delay. If the petitioner fails to avail this opportunity, orders be passed on merits, forthwith."

6. The learned Government Advocate appearing for the respondent is not disputing the fact that the issue involved in these cases is covered by the above said decision.

7. Considering the above said facts and circumstances and in view of the fact that the issue raised herein is covered by the above said decision, all these writ petitions are allowed and the impugned assessment order and demand notice are quashed and the matters are remitted back to the Assessing Authority to consider the whole issue afresh in the light of the above decision made by this Court, as the petitioner has already filed rectification application before the appellate authority. Such exercise shall be done by the Assessing Officer, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

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vsm Sub Assistant Registrar

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To

The Assistant Commissioner(CT),
Egmore Assessment Circle,
No.88, Mayor Ramanathan Road,
Chennai-31.

+1cc to the Special Government Pleader(T), S.R.No.18342

W.P.Nos.6906 to 6908
and 6976 to 6981 of 2017

MP(CO)
CA(11/04/2017)

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