

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
And
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

T.C.No.1 of 2017

Hewlett Packard India Sales Pvt. Ltd.
Nungambakkam, Chennai-600 006. ... Petitioner

Vs.

The State of Tamil Nadu,
Represented by the
Deputy Commissioner (CT)-IV,
Large Taxpayers Unit,
V Floor, Dugar Towers,
No.34 Marshall Road,
Chennai - 600 008. ... Respondent

Prayer:

Tax case revision filed under Section 60 (1) of the Tamil Nadu Value Added Tax Act, 2006 seeking to revise the order of the Sales Tax Appellate Tribunal (Main Bench), Chennai - 104 dated 27.01.2016 in T.A.No.44/2015 in COP.64/2015 against the order of the Joint Commissioner (CT) Appeals, Chennai in AP No.12/14 dated 4.9.2014 against the assessment Order of Deputy Commissioner (CT) IV, Chennai 8 in CST/820486/2010-11 dated 30/12/2013.

For Petitioner : Mr.N.Prasad

For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader (Taxes)

O R D E R

(Order of the Court was delivered by RAJIV SHAKDHER,J.)

1.Issue notice. Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes) accepts notice on behalf of the respondent. With the consent of the learned counsels for the parties, the matter is taken up for hearing and final disposal.

1.1. Consequently, the tax revision case is admitted and, the following questions of law are framed for consideration by this Court:

(i). Whether in the facts and circumstances of the case, the Hon'ble Sales Tax Appellate Tribunal, committed an error of law in disallowing the concessional rate of tax on inter-State sales effected by the petitioners on a turnover of Rs.16,22,19,255/- to M/s.Savex Computers Limited and on a turnover of Rs.1,25,29,283/- to M/s.Karuna Management Services Private Limited on the ground that the invoices raised by the petitioners had been captured in the C Declaration Forms pertaining to the quarter where delivery of goods took place?

(ii). Whether the Hon'ble Sales Tax Appellate Tribunal, committed an error of law in disallowing concessional rate of 2% on inter-State sales effected by the petitioners on a turnover of Rs.16,22,19,255/- to M/s.Savex Computers Limited and on a turnover of Rs.1,25,29,283/- to M/s.Karuna Management Services Private Limited, when in fact the substantive requirement of Section 8(1) read with Section 8(3) and 9 (4) of the CST Act, 1956, had been satisfied by the inter-State sales effected on the petitioners to M/s.Savex Computers Limited and M/s.Karuna Management Services Private Limited?

(iii). Whether the Hon'ble Sales Tax Appellate Tribunal, without prejudice to the above, erred in brushing aside the statement namely Annexure L filed by the petitioners, which indicated that overlapping if any pertained only to a turnover of Rs.6,62,95,215/- on inter-State sales to M/s.Savex Computers Limited, and a turnover of Rs.20,44,660/- on inter-State sales to M/s.Karuna Management Services Private Limited resulting in the tax liability to reduce to only Rs.1,366,797?"

2. Before we proceed further, it is necessary to point out that the petitioner/ Assessee also seeks to place reliance on a Circular issued by the Commissioner of Commercial Taxes being: Circular No.44/2015 D3/2573/2015, dated 20.10.2015 (in short, 'the circular').

2.1. We may further note, a fact, which the counsel for the petitioner concedes, which is that, this circular was not brought to the notice of the Tribunal. It is, however, the learned counsel's contention that the circular would have a bearing on the issues, which arise for consideration in the matter. Accordingly, we intend to deal with this aspect of the matter in the latter part of our judgment.

3. Presently, in order to adjudicate upon the instant case, the following broad facts are required to be noticed:

3.1. The petitioner/ Assessee is a manufacturer of computers, laptops and peripherals. In respect of the assessment year in issue, ie., Assessment Year 2010-2011, it was assessed to tax on total and taxable turnover of Rs.388,78,78,419/- and Rs.208,02,20,270/-, respectively, albeit, under the Central Sales Tax Act, 1956 (in short, the 1956 Act).

3.2. The Assessing Officer vide order dated 30.12.2013, levied a tax at the rate of 12.5%, as against concessional rate of 2% in respect of inter-state sales which were, according to him, not covered by the Form 'C' Declarations. The Assessing Officer, as it appears from the record, refused to extend the benefit of concessional rate of tax of 2% to the petitioner/Assessee for the reason that the Form C declaration covered more than one quarter, that is, recorded sales for the month in which delivery of goods had been made. Thus, the instant matter centres around this sole issue.

4. The petitioner/ Assessee being aggrieved by the order in original passed by the Assessing Officer preferred an appeal with the Joint Commissioner of Commercial Taxes (Appeals), Chennai (in short, the First Appellate Authority).

4.1. The First Appellate Authority vide order dated 04.09.2014 partly allowed the appeal. The petitioner/ Assessee being aggrieved, preferred an appeal with the Tribunal. The Tribunal, qua the point in issue, ruled against the petitioner/ Assessee and in that behalf, made the following observations:

"With regard to assessment made on the turnover of Rs.17,47,48,538/- @ 4% by the Assessing Officer, it is seen that the Assessing Officer has levied higher rate of tax @ 4% on the inter-state sale turnover of Rs.17,47,48,538/- since they have filed defective C declaration forms. On appeal, the first appellate authority had confirmed the assessment made on the impugned turnover

but reduced the higher levy of tax made from 12.5% to 4% with the observation that they were given sufficient time to obtain and produce revised declaration in C Forms but they failed to do so. In fact, the invoices mentioned in the C form declarations pertain to different quarters. If there are minor defects in the C Form submitted, the Assessing Officer should give reasonable opportunity to the dealer to rectify the defects. Admittedly, one declaration in C Forms can cover all transactions in one quarter, irrespective of total amount/ value of transaction during the quarter. If a transaction covers more than one quarter, separate C Form is required to be issued for each quarter.

Rule 12(7) of the CST (R&T) rules 1957 clearly states that the declaration in Form C or Form F shall be furnished to the prescribed authority within 3 months after the end of the period to which the declaration or the certificates relates. Thus, proviso to Rule 12(1) provides that a single declaration Form may cover all transactions of sale, which take place in a quarter of financial year between the same two dealers and the third proviso to Rule 12 (1) towards that where, in the case of any transaction of sale, the delivery of goods is spread over to different quarters in a financial year or of different financial years, it shall be necessary to furnish a separate declaration or certificate in respect of goods delivered in each quarter or a financial year. Thus the declaration mere (sic) relate to sales made in every quarter in terms of second proviso and that it shall be necessary to furnish separate declarations for the same transaction of sale if there are different delivery dates spread over different quarters. Under Section 8(4) of the Central Sales Tax Act, 1956, all the particulars must be filled up by the purchasing dealer before the original is produced before the Assessing Officer for grant of concessional rate of tax. If there is any mistake, the selling dealer / appellant may get it corrected by the

purchasing dealer and if he had already filed it, he may pray for getting a return thereof from the Assessing Officer for getting it properly so corrected. Even though many opportunities were granted to them to obtain and produce revised and rectified declarations after making necessary corrections in the declaration Forms given by the purchasing dealers, the appellants are not in a position to produce the revised declaration C Forms after rectification even after a period of nearly 5 years. A perusal of the particulars contained in Annexure L filed by the Authorised Representative for the appellant, it is nothing but a statement signed by the purchasing dealer Tvl.Savex Computers Ltd., for the entire disputed years and no necessary corrections / rectifications were carried out by the purchasing dealer in the declaration Forms as pointed out by the Assessing Officer. The case law relied on by the appellant are not squarely applicable to the fact of the case on hand. In these circumstances, we see no valid reasons to interfere with the order of the first appellate authority and thereby we restore the order of the first appellate authority in this regard. Hence we hold that the order of the first appellate authority is correct and accordingly, the point is answered."

5.Mr.Prasad, who appears on behalf of the petitioner/ Assessee submits that the Form 'C' Declarations, which had been submitted to claim a concessional rate of tax, ought to have been accepted, as substantive compliance had been made in terms of Section 8(1) read with Section 8(3) and 8(4) of the 1956 Act, as also with the provisions of Rule 12(7) of the Central Sales Tax Rules (RNT) Rules, 1957 (in short, the 1957 Rules).

5.1.In support of his submission, the learned counsel also relied upon Rule 10(2) of the Central Sales Tax (Tamil Nadu) Rules, 1957 (in short, 'T.N.Rules').

5.2.The sum and substance of Mr.Prasad's submission is that merely because Form 'C' Declarations reflected the sale transactions for the quarter in which delivery of goods had been made to the buyer, it could not form the basis for denying the benefit of concessional rate of tax to the petitioner/Assessee, if, otherwise, the transactions were genuine.

5.3. In other words, according to Mr. Prasad, the sales transaction captured in the Form 'C' Declaration, were co-relatable to the date of delivery as against, when the subject goods were despatched.

5.4. In this context, Mr. Prasad stated that the Tribunal failed to take note of the fact that the contracts entered into with the two buyers, namely, Savex Computers Ltd. and Karuna Management Services Private Limited, whose Form C declarations were rejected, required delivery of goods to them, to effect a valid sale.

6. It is therefore, the submission of Mr. Prasad that the petitioner/ Assessee was entitled to concessional rate of tax envisaged under Section 8 (1) as conditions prescribed under Section 8 (4) of the 1956 Act stood, substantially, satisfied.

6.1. Learned counsel further submitted that in so far as sub-rule (1) of Rule 12 of the 1957 Rules was concerned, it envisaged two scenarios, as encapsulated by the 2nd and 3rd proviso. First, where a single declaration could be filed to cover all transactions of sale, which took place in a quarter of a given financial year, between two dealers. Second, where, in a given sale transaction, the delivery of goods is spread over different quarters in a financial year or, even to different financial years.

6.2. In this situation, according to the learned counsel, the third proviso to Rule 12(1) envisages furnishing separate declarations, in respect of goods delivered in each quarter of a financial year, or in different financial years. In other words, according to Mr. Prasad, the declarations can capture sale transactions based on dates of delivery.

7. Mr. Prasad, further contends that under sub-rule (7) of Rule 12, the time limit fixed for furnishing the declaration in Form 'C' was three months from the end of the period, to which, the declaration is relatable.

7.1. Learned counsel submits that in so far as the petitioner/ Assessee is concerned, even, if, it is held that, it does not fall in either of the two provisos referred to under Rule 12 (1) of the 1957 Rules, its case certainly falls under sub-rule (7) of Rule 12 of the 1957 Rules as the declarations were filed, within the prescribed time limit.

7.2.Furthermore, the learned counsel submits that the proviso to sub-rule (7) of Rule 12 empowers the prescribed Authority to accept declarations, which are not filed within the time limit prescribed in the main sub-Rule, if, sufficient cause is shown for condonation of delay.

8.For all these reasons, the learned counsel submits that the declarations could not have been rejected, as was sought to be done by the Assessing Officer.

8.1.Therefore, according to the learned counsel, the Authorities below, had committed an error in sustaining the view that the declaration Forms should have corroborated with the date of the despatch and not with the date of delivery of the subject goods.

8.2.In support of his submission, learned counsel has also placed reliance on the judgment of the Allahabad High Court in the matter of: Jubilant Life Sciences Limited Vs. Commissioner, Commercial taxes, (2014) 70 VST 296 (All).

8.3. Apart from the aforesaid, Mr.Prasad also submitted that the Tribunal did not advert to the ground advanced by the petitioner/Assessee, which is that, the purported defective Form C declarations obtained by it, were of a far lesser value, than that which was noticed by the Authorities below. Mr.Prasad in this behalf sought to bring to our attention, the fact that, so far as the Savex Computers is concerned, the interstate sales transactions were of a value of only Rs.6,62,95,215/- as against Rs.16,22,19,255/-, whereas, in so far as Karuna Management Services Private Limited was concerned, the value of the interstate sales transactions were Rs.20,44,660/- as against Rs.1,25,29,283/-.

8.4.As indicated above, Mr.Prasad, had also drawn our attention to the Circular dated 20.10.2015. Based on the Circular, the argument advanced by Mr.Prasad was that the objection taken by the Revenue was essentially, technical in nature and therefore, the declarations filed could not have been rejected.

9.Mr.Annamalai, who appears on behalf of the respondent, largely relies upon the impugned judgment of the Tribunal, in support of his stand. However, Mr.Annamalai, cannot, but submit that the Assessing Officer under Rule 12 (7) read with the proviso, has the power to accept the delayed declarations, as long as they are genuine and, it could be established that the

goods were despatched to the registered dealers located in another State and, the same are properly accounted for by the dealers in the other State(s).

9.1.As a matter of fact, Mr.Annamalai submits that the situation which arose in the instant case, is contemplated in the Circular dated 20.10.2015. Having said so, learned counsel submits that the Circular is prospective in nature and therefore, cannot apply to the facts of this case.

10.We have heard the learned counsels appearing for the parties and perused the record.

11.Quite clearly, the only issue, which arises for consideration is: whether the Form 'C' declarations filed by the petitioner/ Assessee, could be rejected, only on the ground that they capture the sale transactions relatable to the date, when the delivery of goods took place, as against, when they were despatched.

12.In terms of provisions of Section 8 of the 1956 Act, the petitioner/ Assessee was entitled to a concessional rate of tax, only if, sale was effected to a registered dealer, in another State and requisite Form 'C' Declaration obtained in that behalf are filed with the prescribed Authority.

12.1.The record does not show that there is any dispute with regard to this aspect of the matter. The dispute, as indicated above, is only with regard to the manner in which the sale transactions are captured in the Form 'C' declaration. The Form 'C' declaration captures the sales transaction having regard the date of delivery, as against the date when the subject goods were despatched.

13.In our view, if, the genuineness of the transaction is not in doubt, then, merely because the Form 'C' declarations captured the transactions from the point of view of the date of delivery as against when they were despatched, cannot be the reason for rejecting the Form 'C' declarations.

13.1.The provisos to Rule 12(1) which have been taken recourse to, by the Authorities below cannot be read in a manner, which takes away the benefit, as provided in the Act i.e., Section 8 of the 1956 Act. This view, seems to have been adopted by the Department itself, as is evident, upon perusal of the contents of the Circular dated 20.10.2015, to which, we have made a reference above.

13.2. For the sake of convenience, we may extract hereunder, the entire Circular, as it was issued based on the difficulties

faced by the dealers who carried out inter-state sale transaction:

"1. Certain representations have been received in respect of declaration forms furnished by dealers towards inter-state sales/consignment sales etc. being rejected by the assessing officers on the ground that the date of sale invoice doesn't agree with those mentioned in the declaration forms. It is pertinent to note here that the other state dealers-buyers/ consignees might have issued declaration forms for all the goods received by them in a quarter/ calendar month irrespective of the fact of dispatch date of such goods and in such situations, declarations forms issued may contain deliveries made in that quarter/ calendar month and also previous quarter/ calendar month in a financial year or of different financial years.

2. In this regard, it is pertinent to reproduce the two provisos to rule 12(1) of CST (Registration & Turnover) Rules, 1957.

"Provided that a single declaration may cover all transactions of sale, which take place in a quarter of financial year between the same two dealers."

"Provided also that where, in the case of any transaction sale, the delivery of goods is spread over to different quarters in a financial year or of different financial years, it shall be necessary to furnish a separate declaration or certificate in respect of goods delivered in each quarter of a financial year."

3. As per the provisos, it is necessary to furnish the declaration forms in respect of goods delivered in each quarter of a financial year. In reality, as a trade practice, it may happen that goods dispatched on last days of a quarter/ calendar month are received in the first part of next quarter/ calendar month and the other state dealer-buyer/ consignee may mention the date of receipt/ delivery of goods in the declaration form as against date of sales invoice or date of dispatch of goods, which need not be rejected outright by the assessing officers.

4. Declaration forms are meant to ensure that the goods are dispatched to registered dealers in other state and the same is properly accounted for by the dealers in other states. If this principal objective is satisfied, the purpose for which declaration forms are intended need not be negated on such insignificant grounds. Accordingly, to resolve the practical difficulties being faced by dealers owing to prevailing trade practices, it is clarified that such declaration forms in respect of delivery of goods being spread over to different quarters/ calendar months in a financial year or of different financial years can be accepted as valid declarations, based on the date of sales invoice or date of dispatch or date of receipt/delivery of goods in other state of combination of all the three possibilities."

14.A perusal of the aforesaid extract from the circular dated 20.10.2015 would show that the Revenue itself has taken a view that technicalities, to which we have made a reference above, ought not to come in the way of acceptance of declaration forms. A case in point is, when, goods are despatched on the last day of the last quarter of a financial year and, they are recorded by the buyer in his record, based on the date of delivery or receipt and declaration is issued accordingly. In such circumstance, could it be said that the seller would not be given the benefit of the Form C declaration. We think not.

14.1. The argument of Mr. Annamalai, that the circular is prospective cannot be accepted, as, in our view, the circular only clarifies the position, as it ought to obtain. The reason for the same, is, that the Rules cannot constrict the right which is, otherwise, available to an Assessee, under the substantive provisions of the Act.

15. The second and third provisos of Rule 12 (1) of the 1957 Rules, contemplate only two scenarios. The present case, presents, in a sense, a third scenario, which is not envisaged under the Rules. Furthermore, as rightly pointed out by Mr. Prasad, Rule 10 (2) of the T.N. Rules, permits an Assessee to file declaration forms, relating to a given year any time before the final assessment of the accounts of that particular year.

15.1. For the sake of convenience, the relevant extract of the said Rule is set forth hereunder:

"10.(1) A registered dealer, who wishes to purchase goods from another such dealer on payment of tax at the rate applicable under the Act

(2) A registered dealer who claims to have made a sale to another registered dealer shall in respect of such claim, attach to his return in Form 1 the portion marked 'Original' of the declaration received by him from the purchasing dealer; or duplicate of such declaration / Certificate where the original has been lost. The assessing authority may in his discretion also direct the selling dealer to produce for inspection the portion of the declaration / Certificate marked 'Duplicate'.

Notwithstanding anything contained in the foregoing paragraph and in Rule 5, the selling dealer may, instead of attaching the Form of declaration / Certificate to the return in Form 1 keep it in his custody subject to the condition that he submits all the Forms of declaration / Certificate relating to the year at any time before the final assessment of the accounts of that year."

(Emphasis is ours)

16. Clearly, if Rule 10(2) of the T.N.Rules is applied, the declaration forms could have been filed at any time before the final assessment. Therefore, it is not as if, because there was delay, the petitioner/Assessee could have been deprived of its right to be assessed at a concessional rate of tax.

16.1. These aspects were lost sight of by the Tribunal.

16.2. Besides the above, Mr. Prasad, is right in his contention that the Tribunal did not examine the alternative plea of the petitioner/Assessee, which was that, even if his plea with regard to the tenability of Form - C declarations was not entertained, the turnover with regard to which the alleged defect in the declarations obtained, was much lower. The petitioner/Assessee has asserted that the value of the inter-state sale qua Savex Computers Limited amounted to only Rs.6,62,95,215/-, while, vis-a-vis, Karuna Management Services Private Limited, it amounted to Rs.20,44,660/-.

16.3. This aspect was not examined by the Tribunal.

17. Therefore, having regard to the peculiarity of circumstances and the view expressed above, we are of the opinion, that the impugned judgment of the Tribunal cannot be sustained.

17.1. The impugned judgment is accordingly set aside, with a direction to the Assessing Officer to reexamine the matter, in the background of what is stated above, by us and then, reach a definitive conclusion, as to the rate of tax, which ought to be made applicable to the petitioner/ Assessee, qua the transactions in issue.

17.2. Consequently, the questions of law, as set out above are answered in favour of the petitioner/ Assessee and against the Revenue.

18. The tax case revision is disposed of in the aforesaid terms. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

pri/sl
To

1. The Registrar,
Sales Tax Appellate Tribunal (Main Bench),
Chennai - 600 104.

2. The Deputy Commissioner (CT)-IV,
Large Taxpayers Unit,
V Floor, Dugar Towers,
No.34 Marshall Road, Chennai - 600 008.

3. The Joint Commissioner (CT)
Appeals,
3rd Floor, CT Building Annexe, Greams Road, Chennai-6.

+1cc to Mr.N.Inbarajan, Advocate Sr.25207
+1cc to the Special Government Pleader Sr.25457

T.C.No.1 of 2017

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