

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2017

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE R.PONGIAPPAN

Tax Case (Revision) No.66 of 2017

The State of Tamil Nadu
rep. By the Joint Commissioner (CT)
Chennai (North) Division
Chennai 600 006.

... Petitioner

Vs.

Tvl. India Rosin Industries
No.3 Post Office Street
Chennai 1.

... Respondent

Tax Case Revision filed under Section 60 of the Tamil Nadu VAT Act, 2006, against the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai, dated 25th day of October 2013, passed order in S.T.A.No.86 of 2011.

For petitioner

...

Ms.Narmadha Sampath
Special Government Pleader
(Taxes)

For respondent

...

Mr.P.Prethiri Chopra
for
Mr.T.Pramodh Kumar Chopra

ORDER

(Order of the Court was made by **S.MANIKUMAR, J**)

Instant Tax Case (Revision) is filed against the order made in S.T.A.No.86 of 2011, dated 25/10/2013, on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai.

2. Short facts leading to the appeal are that Tvl. India Rosin Industries, manufacturers and traders in Rosin, Pine oil and turpentine has been assessed, on a total and taxable turnover of Rs.1,33,21,127/- and Rs.74,79,096/-, respectively for the year 2005 - 2006, under the Central Sales Tax Act, 1956 and the Assistant Commissioner (CT), Harbour - II Assessment Circle, has issued a revision notice, proposing to dis-allow the exemption granted, on the strength of Form C and proposed to assess turnover at 12.6%.

3. Responding to the revision notice, assessee/respondent had informed the Assistant Commissioner (CT), Harbour - II Assessment Circle, that they would submit the original 'C' forms. Forms were not submitted and hence, vide order, dated 30/7/2009, Assistant Commissioner (CT), Harbour - II Assessment Circle, passed orders, disallowing exemption on consignment sale.

4. Being aggrieved, the assessee has preferred an appeal in

C.S.T.No.7 of 2007, before the Deputy Commissioner (CT - I), FAC, Chennai and contended that Form - C declaration, covering the consignment transfer was misplaced and therefore, duplicate portion of Forms were filed. The assessee has further submitted that revision of assessment, disallowing the exemption thereof, for want of production of original Form 'C', was illegal. Reliance has also been made to the decision in *Manganese Ore (India) Ltd Vs. Commissioner of Sales, Tax, Madhya Pradesh, reported in {1991 (83) STC 116}*.

5. Per contra, before the Appellate Deputy Commissioner (CT) - I (FAC), Chennai, departmental representative had submitted that original part of 'C' Form is mandatory for claiming concessional rate. He has further submitted that duplicate form is not valid, and for the above said reasons, prayed to sustain the order of the assessing officer.

6. After considering the rival submissions and taking note of the decision rendered in *Manganese Ore (India) Ltd Vs. Commissioner of Sales, Tax, Madhya Pradesh, {1991 (83) STC 116}*, the Appellate Deputy Commissioner (CT) - I (FAC), Chennai, vide order, dated 14/7/2010, held as follows:-

“The appellant had filed duplicate Form 'F' for Rs.1,37,279.00 since the original copy of the Form 'F' was lost by the appellant. In the absence of original copy of the form 'F' the assessing officer disallowed the exemption claimed by the appellant. The Authorised representative rightly argued

and relied on the case laws reported in 83 STC 116 in the case of Manganese Ore (India) Ltd., Vs. Commissioner of Sales Tax, Madhya Pradesh held that though the appellant did not file the original part of 'C' form, it did file the duplicate part of 'C' form. The 'C' form consist of three parts: original, duplicate and counterfoil. All the three parts are identical in terms and they all form part of the 'C' form. It must therefore, follow that the declaration Form 'C' was furnished, but instead of that part of the form which contained the word original and which was meant for being filed before the Assessing Officer, 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 Officer. It is the form itself, by which 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 Officer. In the light of these facts and provisions of law, we are of the view that there was sufficient compliance with the provisions of Section 8 (4) of the CST Act and those of Rule 12 (i) of CST Rules, so as to entitle the assessee to get the benefit of concessional rate of tax under Section 8 (1) of the CST Act.

In view of the above judgment, there is no wrong on filing of duplicate 'C' form for availing concessional rate by the appellant. Therefore, the assessment passed by the Assessing Officer is set aside.

In the result, the appeal is allowed.”

7. Being aggrieved by the order made in CST No.7 of 2009, dated

<http://www.judis.nic.in> 14/7/2010, of the Appellate Deputy Commissioner (CT) - I, FAC, Chennai,

State of Tamil Nadu, represented by the Joint Commissioner (CT), Chennai

(North) Division, Chennai, has preferred an appeal under Section 36 (1) and (2) of the then Tamil Nadu General Sales Tax Act.

8. Though reference has been made to Rule 12 (2) and (3) of the Central Sales Tax Act, 1956, Central Sales Tax (Registration and Turnover) Rules, 1957 and Rule 10 (2) of the Central Sales Tax (Tamil Nadu) Rule 1957, and contention has been made that the assessee, ought to have filed the original portion of forms, or duplicate of the declaration, where original has been lost, in order to avail the claim of exemption and further contention has been made that the decision made in *Manganese Ore (India) Ltd Vs. Commissioner of Sales, Tax, Madhya Pradesh, {1991 (83) STC 116}*, has no application to the case on hand, the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai, vide order, dated 25/10/2013, in S.T.A.No.86 of 2011, dismissed the appeal as hereunder:-

“The Additional State Representative submitted that the original port of Form F is mandatory for claiming concessional rate. Further, there is every possibility to misuse the original form for another transaction.

Per contra, the counsel for respondent submitted that the Form F declaration covering the consignment transfer were misplaced and therefore, the duplicate portion of Form F were filed before Assessing Officer. The Assessing Officer initially accepted the duplicate Form F and allowed exemption. But subsequently, he disallowed the exemption for want of original part of Form F. The act of Assessing Officer is illegal. Further the Assessing Officer has issued notice to the dealer accepting the verdict of Appellate

Deputy Commissioner (CT) and proposed to levy tax at 4%. Now, it is not far to proceed with the appeal.

Further, he argued that the case law reported in 83 STC 116 *Manganese Ore (India) Ltd*, is very relevant in this case. Though the case was disposed by Hon'ble High Court in M.P., the facts involved was connected with Central Tax Act, 1956 and Rules. It is Central Act and Forms are common. Considering the case law, he prayed to dismiss the appeal.

Records perused. Admittedly, the respondent filed duplicate Form F for Rs.1,39,299/-. Since the original copy of the Form F was lost by the respondent. Our Hon'ble High Court of M.P in the case of 83 STC 116 held that the filing of 'Duplicate' part and Form C instead of the "original" was sufficient compliance with the provisions of Section 8 (4) of Central Sales Act, 1956 Act and Rules 12 (1) of Central Sales Tax Act, 1956 (Registration and Turnover) Rules to get benefit of concessional rate of tax under Section 8 (1) of Central Sales Tax Act, 1956. Though the citation is related to C Form, Form F also comes under Central Sales Tax Act, 1956 and Rules.

Further, the Rule 10 (2) CSTC (Tamil Nadu) Rules 1957 also permitted to file duplicate Form if the original is lost. So there is no wrong in filing duplicate Form F for availing concessional rate of tax by the respondent.

In view of the above discussion, this Tribunal comes to the conclusion that the filing of duplicate Form F is sufficient compliance complying the Rules. The Appellate Deputy Commissioner (CT) also has taken the same view. Therefore, the order of Appellate Deputy Commissioner (CT) is correct and no interference is warranted.

In the result, the appeal is dismissed."

9. Being aggrieved by the dismissal of the appeal in S.T.A.No.86 of 2011, dated 25/10/2013, on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai, instant Tax Case Revision Petition is filed, on the following substantial questions of law:-

“1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that duplicate Form F is sufficient for availing concessional rate of tax?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that though the decision reported in 83 STC 116 is related to C Form, F Form also comes under CST Act?

3. Whether on the facts and in the circumstances of the case, the Tribunal was right in not considering the Rule 10 (2) of the CST Rule which prescribed, under which circumstances duplicate forms can be accepted?

4. Whether on the facts and in the circumstances of the case, the Tribunal was right in not considering Rule 12 (2) and 12 (3) of the CST Rule which deals with the procedure to be followed for obtaining duplicate forms in lieu of the original declaration forms lost?

5. Whether the Tribunal was right in ignoring the fact that the dealer while replying to the pre-revision notice issued by the Assessing Officer, promised to file the original form and requested extension of time for filing the same?”

10. Inviting the attention of this Court to Rule 12(2) and (3) of the Central Sales Tax (Registration and Turnover) Rules, 1957 and Rule 10 (2) of

the Central Sales Tax (Tamil Nadu) Rules, 1957, Ms.Narmadha Sampath, learned Special Government Pleader submitted that when a blank or duly completed Form is lost, then the purchasing dealer shall furnish in respect of every such Form, so lost, an indemnity bond in Form G, to the Notified Authority from whom the said Form was obtained for such sum, as the said authority may, having regard to the circumstances of the case, fix.

11. According to learned Special Government Pleader, the above qualification prescribed, in Section 12 (2) of the Central Sales Tax (Registration and Turnover) Rules, 1957, has not been satisfied by the assessee/respondent herein, and therefore, the Assessing Officer, enjoined with a discretion, either to accept the duplicate of such declaration or not/certificate, on the ground that the original has been lost, has exercised his jurisdiction, when the original 'C' Form declaration were not produced, despite several opportunities given and rightly, disallowed the exemption claimed.

12. It is the further contention of the learned Special Government Pleader that the conduct of the revision petitioner, in protracting the submission of Form C licences, does not require, any indulgence by the appellate authority, including the Tribunal. She further submitted that the decision in *Manganese Ore (India) Ltd Vs. Commissioner of Sales, Tax, Madhya Pradesh, reported in {1991 (83) STC 116}*, rendered by Madhya Pradesh High Court at Jabalpur, is not applicable to the case on hand. For the above said reasons, she prayed for interference with the order, dated

25/10/2013, made in S.T.A.No.86 of 2011, passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai.

Heard Ms.Narmadha Sampath, learned Special Government Pleader (Taxes) and perused the materials available on record.

13. Chapter 3 of Central Sales Tax Act, 1956, deals with Inter-State Sales Tax. Sections 6 and 8 deals with Liability to pay tax on inter-state sales and rates of tax on sales in the course of inter-State trade or commerce and the same are extracted hereunder:

"(1) Subject to the other provisions contained in this Act, every dealer shall, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, be liable to pay tax under this Act on all sales of goods other than electrical energy] effected by him in the course of inter-State trade or commerce during any year on and from the date so notified:

Provided that a dealer shall not be liable to pay tax under this Act on any sale of goods which, in accordance with the provisions of sub-section (3) of section 5 is a sale in the course of export of those goods out of the territory of India.

(1A) A dealer shall be liable to pay tax under this Act on a sale of any goods effected by him in the course of inter-State trade or commerce notwithstanding that no tax would have been leviable (whether on the seller or the purchaser) under the sales tax law of the appropriate State if that sale had taken place inside that State.

(2) Notwithstanding anything contained in sub-section (1) or sub-section (1A), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods to a registered dealer, if the goods are of the description referred to in sub-section (3) of section 8, shall be exempt from tax under this Act:

Provided that no such subsequent sale shall be exempt from tax under this subsection unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time or within such further time as that authority may, for sufficient cause, permit,—

(a) a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in a prescribed form obtained from the prescribed authority; and

(b) if the subsequent sale is made to a registered dealer, a declaration referred to in subsection (4) of section 8:

Provided further that it shall not be necessary to furnish the declaration referred to in clause (b) of the preceding proviso in respect of a subsequent sale of goods if,

(a) the sale or purchase of such goods is, under the sales tax law of the appropriate State exempt from tax generally or is subject to tax generally at a rate which is lower than three percent, or such reduced rate as may be notified by the Central Government, by notification in the

Official Gazette, under sub-section (1) of section 8 (whether called a tax or fee or by any other name); and

(b) the dealer effecting such subsequent sale proves to the satisfaction of the authority referred to in the preceding proviso that such sale is of the nature referred to in this subsection.

(3) Notwithstanding anything contained in this Act, no tax under this Act shall be payable by any dealer in respect of sale of any goods made by such dealer, in the course of inter-State trade or commerce, to any official, personnel, consular or diplomatic agent of—

(i) any foreign diplomatic mission or consulate in India; or
 (ii) the United Nations or any other similar international body, entitled to privileges under any convention or agreement to which India is a party or under any law for the time being in force, if such official, personnel, consular or diplomatic agent, as the case may be, has purchased such goods for himself or for the purposes of such mission, consulate, United Nations or other body.

(4) The provisions of sub-section (3) shall not apply to the sale of goods made in the course of inter-State trade or commerce unless the dealer selling such goods furnishes to the prescribed authority a certificate in the prescribed manner on the prescribed form duly filled and signed by the official, personnel, consular or diplomatic agent, as the case may be.

(6A) Burden of proof, etc., in case of transfer of goods claimed otherwise than by way of sale.—

(1) Where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground

that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority, within the prescribed time or within such further time as that authority may, for sufficient cause, permit, a declaration, duly filled and signed by the principal officer of the other place of business, or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, along with the evidence of despatch of such goods and if the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale.

(2) If the assessing authority is satisfied after making such inquiry as he may deem necessary that the particulars contained in the declaration furnished by a dealer under sub-section (1) are true he may, at the time of, or at any time before, the assessment of the tax payable by the dealer under this Act, make an order to that effect and thereupon the movement of goods to which the declaration related shall be deemed for the purpose of this Act to have been occasioned otherwise than as a result of sale.

Explanation — In this section, "assessing authority", in relation to a dealer, means the authority for the time being competent to assess the tax payable by the dealer under this Act.

.....

8. Rates of tax on sales in the course of inter-State trade or commerce.—

(1) Every dealer, who in the course of inter-State trade or commerce, sells to a registered dealer goods of the description referred to in sub-section (3), shall be liable to pay tax under this Act, which shall be three percent, of his turnover or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State, whichever is lower:

Provided that the Central Government may, by notification in the Official Gazette, reduce the rate of tax under this sub-section.

(2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within subsection (1), shall be at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State.

Explanation— For the purposes of this sub-section, a dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law.;

(2A) ***

(3) The goods referred to in sub-section (1)

(a) ***

(b) *** are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for re-sale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or in the telecommunications network or in mining or in the

generation or distribution of electricity or any other form of power;

(c) are containers or other materials specified in the certificate of registration of the registered dealer purchasing the goods, being containers or materials intended for being used for the packing of goods for sale;

(d) are containers or other materials used for the packing of any goods or classes of goods specified in the certificate of registration referred to in clause (b) or for the packing of any containers or other materials specified in the certificate of registration referred to in clause (c).

(4) The provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority: Provided that the declaration is furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit.

(5) Notwithstanding anything contained in this section, the State Government may on the fulfillment of the requirements laid down in sub-section (4) by the dealer if it is satisfied that it is necessary so to do in the public interest, by notification in the Official Gazette and subject to such conditions as may be specified therein direct,—

(a) that no tax under this Act shall be payable by any dealer having his place of business in the State in respect of the sales by him, in the course of inter-State trade or commerce, to a registered dealer from any such place of

business of any such goods or classes of goods as may be specified in the notification, or that the tax on such sales shall be calculated at such lower rates than those specified in sub-section (1), as may be mentioned in the notification;

(b) that in respect of all sales of goods or sales of such classes of goods as may be specified in the notification, which are made, in the course of inter-State trade or commerce to a registered dealer by any dealer having his place of business in the State or by any class of such dealers as may be specified in the notification to any person or to such class of persons as may be specified in the notification, no tax under this Act shall be payable or the tax on such sales shall be calculated at such lower rates than those specified in subsection (1) as may be mentioned in the notification.

(6) Notwithstanding anything contained in this section, no tax under this Act shall be payable by any dealer in respect of sale of any goods made by such dealer, in the course of inter-State trade or commerce to a registered dealer for the purpose of setting up, operation, maintenance, manufacture, trading, production, processing, assembling, repairing, reconditioning, reengineering, packaging or for use as packing material or packing accessories in a unit located in any special economic zone or for development, operation and maintenance of special economic zone by the developer of the special economic zone, if such registered dealer has been authorised to establish such unit or to develop, operate and maintain such special economic zone by the authority specified by the Central Government in this behalf.

(7) The goods referred to in sub-section (6) shall be the goods of such class or classes of goods as specified in the certificate of registration of the registered dealer referred to

in that sub-section.

(8) The provisions of sub-sections (6) and (7) shall not apply to any sale of goods made in the course of inter-State trade or commerce unless the dealer selling such goods furnishes to the 10[prescribed authority referred to in sub section (4) a declaration in the prescribed manner on the prescribed form obtained from the authority specified by the Central Government under sub-Explanation— For the purposes of sub-section (6), the expression "special economic zone" has the meaning assigned to it in clause (iii) to Explanation 2 to the proviso to section 3 of the Central Excise Act, 1944 (1 of 1944)."

14. In exercise of the powers conferred under Section 12 (2) & (3) of the Central Sales Tax Act, 1956, the Central Sales Tax (Registration and Turnover) Rules, 1957, have been framed. Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957, deals with declaration and certificate referred to in sub-Section 4 of Section 8 shall be in Forms C and D respectively:

"Provided that Form C in force before the commencement of the Central Sales Tax (Registration and Turnover) (Amendment) Rules, 1974 or before the commencement of the Central Sales Tax (Registration and Turnover) Rules, 1976 may also be used upto the 31st December, 1980 with suitable modifications:

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

Provided also 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 of a financial year:

(2). Where a blank or duly completed Form of declaration is lost, whether such loss occurs while it is in the custody of the purchasing dealer or in transit to the selling dealer, the purchasing dealer shall furnish in respect of every such Form so lost an indemnity bond in Form G to the Notified Authority from whom the said Form was obtained for such sum as the said authority may, having regard to the circumstances of the case, fix. Such indemnity bond shall be furnished by the selling dealer to the Notified Authority of his State if a duly completed Form of declaration received by him is lost, whether such loss occurs while it is in his custody or while it is in transit to the Notified Authority of his State:

Provided that where more than one Form of declaration is lost, the purchasing dealer or the selling dealer, as the case may be, may furnish one such indemnity bond to cover all the Forms of declarations so lost.

(3). Where a declaration Form furnished by the dealer purchasing the goods or the certificate furnished by the Government has been lost, the dealer selling the goods may demand from the dealer who purchased the goods or, as the case may be, from the Government, who purchased the goods, a duplicate of such Form or Certificate, and the same shall be furnished with the following declaration recorded in red ink and signed by the dealer or authorised officer of the Government, as the case may be, on all the three portions of such Form or Certificate:

I hereby declare that this is the duplicate of the

declaration Form/Certificate No.----- signed on ----- and issued to ----- who is a registered dealer of ----- (State) and whose Registration Certificate number is -----

(4). The Certificate referred to in sub-Section (2) of Section 6 shall be in Form E-I, or Form E-II, as the case may be.

(5). The declaration referred to in sub-Section (1) of Section 6 A shall be in Form F:

Provided that a single declaration may cover transfer of goods by a dealer to any other place of his business or to his agent or principal, as the case may be, effected during a period of one calendar month:

Provided further that if the space provided in Form F is not sufficient for making the entries, the particulars specified in Form F may be given in separate Annexures attached to that Form so long as it indicated in the Form that the Annexures form part thereof and every such Annexure is signed by the person signing the declaration in Form F:

Provided further that Form F in force before the commencement of the Central Sales Tax (Registration and Turnover) (Second Amendment) Rules, 1973 may continue to be used upto 31st day of December, 1980 with suitable modifications.

(6). Form C referred to in sub-rule (1) or as the case may be, Form F referred to in sub-rule (5), shall be the one obtained by the purchasing dealer or, the case may be, the transferee in the State in which the goods covered by such Form are delivered.

Explanation - Where, by reason of the purchasing dealer not being registered under Section 7 in the State in which the goods covered by Form C referred to in sub-rule (1) are delivered, he is not able to obtain the said Form in the State,

Form C may be the one obtained by him in the State in which he is registered under the said Section.

(7). The declaration in Form C or Form F or the Certificate in Form E-I or Form E-II shall be furnished to the prescribed authority within three months after the end of the period to which the declaration or the certificate relates:

Provided that if the prescribed authority is satisfied that the person concerned was prevented by sufficient cause from furnishing such declaration or Certificate within the aforesaid time, that authority may allow such declaration or Certificate to be furnished within such further time as that authority may permit.

(8) (a) The person referred to in clause (a) of sub-rule (1) of Rule 3 shall alone be competent to sign the declaration in Form C or Form F or the Certificate in Form E-I or Form E-II:

Provided that where such person is a Proprietor of any business or a Partner of any business or a Partner of a Firm or a Karta or Manager of a Hindu undivided family, any other person authorised by him in writing may also sign such declaration or Certificate:

Provided further that in the case of a Company such declaration or Certificate can also be signed by any other Officer of the Company authorised under the Memorandum or Articles of Association of the Company or under any other special or general resolution of the Company or under a resolution passed by the Board of Directors of the Company, to authenticate any document on behalf of such Company.

(b). Such person shall signify on such declaration or Certificate his status and shall make a verification in the manner provided in such declaration or Certificate.

(9) (a) The provisions of sub-Rule (2) and sub-rule (3)

shall, with necessary modifications, apply to the declaration in Form F or the Certificate in Form E-I or Form E-II.

(b). The provisions of the second and third proviso to sub-rule (1) shall with necessary modifications, apply to certificates in Form E-I or Form E-II.

[(10) (a) The declaration referred to in sub-section (4) of Section 5 shall be in form H and shall be furnished to the prescribed authority upto the time of assessment by the first assessing authority].

(b). The provisions of the Rules framed by the respective State Governments under sub-Sections (3), (4) and (5) of Section 13 relating to the authority from whom and the conditions subject to which any Form of Certificate in Form H may be obtained, the manner in which such Form shall be kept in custody and records relating thereto maintained and the manner in which any such Forms may be used and any such Certificate may be furnished in so far as they apply to declaration in Form C prescribed under these Rules shall mutatis mutandis apply to Certificate in Form H.

[(11) The declaration referred to in sub-section (8) of Section 8 of the Act, shall be in Form I].

[(11 A) The certificate referred to in sub-Section (4) of Section 6 shall be in Form J and shall be furnished to the prescribed authority upto the time of assessment by the first assessing authority].”

15. Form C which deals with the Form of declaration and the sale of the issuing authority is extracted hereunder:

Name of issuing State -----

Office of issue -----

Date of issue -----

Name of the purchasing dealer to whom issued along
with his Registration Certificate No.----- Date, from
which registration is valid -----

Serial No.-----

Seal of Issuing Authority

To
Seller

Certified that the goods ordered for in our purchase order
No.----- dated ----- supplied as per Bill/Cash Memo/Challan as
stated below.

Purchased from you as per Bill/Cash memo/Challan No.---
dated ---- as stated below ----- are for resale/use in
manufacture/processing of goods for sale/resale and are
covered by my/our Registration Certificate No.---- dated -----
issued under the Central Sales Tax Act, 1956.

It is further certified that I/we am/are not registered
under Section 7 of the said Act in the State of ----- in which the
goods covered by this form are/will be delivered.

Name and address of the purchasing dealer in full
----- Date -----

The above statements are true to the best of my
knowledge and belief.

Signature

(Name of the person signing the declaration)

(Status of the person signing the declaration
in relation to the dealer)

16. In exercise of the powers conferred by sub-Sections (3) and (4) of Section 13 of the Central Sales Tax Act, 1956 (Act 74 of 1956), Government of Tamil Nadu have framed the Central Sales Tax (Tamil Nadu) Rules, 1957. Rule 10 (2) of the Central Sales Tax (Tamil Nadu) Rules, 1957, which deals with the filing of duplicate declaration or certificate when the original has been lost, is extracted hereunder,

"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."

17. Though Ms.Narmadha Sampath, learned Special Government Pleader contended that one of the conditions required to be satisfied by the purchasing dealer is that the Forms should have been lost and that the purchasing dealer, ought to have submitted an indemnity bond, in Form G to the notified authority, from whom the said Form was obtained, for such

sum and only in the event of satisfying the above said requirement, the Assessing Authority can decide, as to whether such duplicate/certificate, can be accepted or not, and further submitted that in the case on hand, when purchasing dealer had failed to discharge the statutory obligation, refusal to accept the duplicate forms, cannot be said to be erroneous, we are not inclined to accept the said contention, for the simple reason that the Assistant Commissioner (CT) Harbour 2, Assessment Circle, has not passed orders, with the above said reasons.

18. Perusal of the order, dated 30/7/2009, of the Assistant Commissioner (CT)-II, Assessment Circle, Chennai, shows that the said order has been passed on the ground that original forms have not been submitted before the assessing officer. However, before the Appellate Deputy Commissioner (CT)-I, FAC, Chennai, assessee/writ petitioner has filed Form C, for Rs.1,37,279.00, claiming that the original is lost.

19. The Appellate Deputy Commissioner (CT) - I, FAC, Chennai, is a fact finding authority and exercises, both the original as well as appellate jurisdiction. Perusal of the order of the Appellate Deputy Commissioner further shows that there has been an application to the provisions Section 8 (4) and Rule 12 (1) of the Central Sales Tax (Registration and Turnover) Rules, 1957.

20. Having regard to the Forms (Original, duplicate or counter foil)

and placing reliance on the decision rendered in ***Manganese Ore (India) Ltd Vs. Commissioner of Sales, Tax, Madhya Pradesh, reported in {1991 (83) STC 116}***, the Appellate Deputy Commissioner (CT)-I, has passed the orders, stating that, there is nothing wrong in filing duplicate forms, for availing concessional rate. The Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai, has referred to the Rules and accordingly, concurred with the views of the appellate Authority.

21. Though before the appellate Authority, contention has been made that submission of original portion of Form, is mandatory for claiming concessional rate and that there is every possibility of misuse of original Form, in some other transaction, the said contention has been rejected. Form C (Rule 12 (1)), is issued by the State authority of the State. It also contains and name of the person signing the declaration. Genuineness of the duplicate forms issued by the authority of the other state to the purchaser-dealer is not disputed. Revenue has not disputed that there was a inter-state sale and that a certificate has been issued by the competent authority. Both the appellate Deputy Commissioner (CT), Chennai, as well as the Tribunal had the opportunity of perusing the duplicate forms. Assessee has relied on ***Manganese Ore Ltd's*** case and revenue has not placed any contra decision. On the facts and circumstances of the instant case, the said judgment has persuasive value and rightly applied.

22. Merely because the assessee had not made any submission, before

the Assessing Officer that he had lost the original, it cannot be contended that he cannot made such submission, before the Appellate Authority, which is also a fact finding authority.

23. In **State of Himachal Pradesh and others Vs. Gujarat Ambuja Cement Ltd.**, and another reported in 142 STC 1 (SC), while dealing with the belated filing of statutory forms, the Hon'ble Supreme Court, held as follows:-

“It was urged on behalf of the appellant-State that declaration forms under the Central Act were not filed within the time and/or were defective. That does not in reality amount to non-compliance of a statutory provision. The respondent No.1 Company was claiming compensation and, therefore, had not filed the declaration forms. Some of the forms which were filed were treated to be defective. Undisputedly, before the revisional authority a prayer was made for grant of opportunity to rectify the defects, if any. That was turned down. It is to be noted that under Rule 12 (7) of the Central Sales Tax (Registration and Turnover) Rules, 1957 (in short the 'Registration Rules') the declaration form can be filed at a subsequent point of time and not necessarily along with returns. On an application being made before the Assessing Officer, the exemption can be granted. The object of the Rule is to ensure that the assessee is not denied a benefit which is available to it under law on a technical plea. The Assessing Officer is empowered to grant time. That means that the provisions requiring filing of declaration forms along with the return is a directory provision and not a mandatory provision. In a given case,

even the declaration forms can be filed before the appellate authority as an appeal is continuation of the assessment proceedings. In a given case, if the appellate authority is satisfied that assessee was prevented by reasonable and sufficient cause which dis-enabled him to file the forms in time, it can be accepted. It can also be accepted as additional evidence in support of the claim for deduction. In the instant case, respondent No.1 Company made a specific request before the revisional authority which was turned down. Therefore, the question of any non-compliance with the relevant statutes does not arise. It was noted by this Court in Sahney Steel and Press Works Ltd., and Another Vs. Commercial Tax Officer and Ors., [1985]4 SCC 173 that even in a given case, an assessee can be given an opportunity to collect Declaration Forms and furnish them to the assessing authority if the challenge of the assessee to taxability of a particular transaction is turned down.”

24. In the light of the above discussion and decision, we find no merit in this appeal. Subsequently, substantial questions of law are answered against the revenue. No costs.

(S.M.K., J) (R.P.A., J)

13th December 2017

mvs/skm

S.MANIKUMAR, J
AND
R.PONGIAPPAN, J

skm

To

The Tamil Nadu Sales Tax Appellate Tribunal
(Additional Bench), Chennai.



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