IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

W.P.Nos.3394 and 3395 of 2017
And
W.M.P.No.3377 of 2017

M/s.Transasia Bio-Medicals Ltd.,
Rep. by its Authorised Representative
Mr.Ashok Suthar,
General Manager -Taxations & Legal
... Petitioner in both the W.Ps.

Vs.

The Deputy Commercial Tax Officer - II
Office of the Commercial Tax Officer,
2nd Floor, CT Complex, 100 Feet Road,
Ellapanchavady, Puducherry - 605 005.
... Respondent in both the W.Ps.

Prayer in W.P.No.3394 of 2017:
Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned assessment order dated 22.12.2016 for the assessment no. and year CST 34510010125/2013-2014 passed by the respondent and quash the same and direct the respondent to pass a revised order after taking into consideration C and F Forms filed along with the representation dated 19.01.2017 and as illegal.

Prayer in W.P.No.3395 of 2017:
Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records pertaining to the impugned order dated 23.01.2017 in TIN: 34510010125/DCTO-II/2016-17 passed by the respondent.

For Petitioner : Mr.G.Derrick Sam

For Respondent : Ms.Reena Iyswarya
Additional Government Pleader (P)

COMMON ORDER

1.Issue Notice. Ms.Reena Iyswarya, learned Additional Government Pleader (P), accepts notice on behalf of the respondent. With the consent of the learned counsels for parties, the writ petitions are taken up for hearing and final disposal.

2.The petitioner is aggrieved by the assessment order and the notice dated 22.12.2016 and 23.01.2017 respectively, passed by the respondent.

2.1.Furthermore, the petitioner seeks a direction from this Court for consideration of its representation dated 19.01.2017, to take on record, the relevant declarations made in Form C and F.

3.The petitioner claims that is is a registered dealer under the Puducherry Value Added Tax Act, 2007 (in short, 2007 Act). It is averred by the petitioner that it is in the business of trading in medical equipment. The petitioner claims that it trades both imported equipment as well as medical equipment manufactured in India.

4.It is the case of the petitioner that for the purposes of its business, it has set up a warehouse in Puducherry, and that, a major part of its sales are carried out on inter State sale basis from its warehouse.

4.1.Furthermore, the petitioner, thus asserts that stocks are, accordingly, transferred from warehouse in Puducherry to other States against declarations made in Form F.

4.2. The record shows that the respondent had issued a notice dated 08.01.2015, to the petitioner concerning assessment year 2013-14. As per the said notice, the respondent proposed to reverse the concessions taken by the petitioner against declarations made in Form C and Form F. In other words, the respondent proposed to tax the subject transactions, at the applicable rate under the 2007 Act.

4.3.In response to the said notice, the petitioner, evidently, sent a communication dated 19.01.2015 to the respondent seeking a month's time to upload the relevant declarations via internet. The petitioner avers that time was sought, as its officers were busy with the year-end audit. The petitioner claims that, accordingly, as indicated in its communication dated 19.01.2015, via, its subsequent communication dated 12.02.2015, original declarations in Form C and F were submitted to the respondent.

4.4.Insofar as the declarations in Form C were concerned, they bore a cumulative value of Rs.4,28,32,602/-, and were, 100 in number. Insofar as the declarations in Form F were concerned, they were 59 in number and bore a cumulative value of Rs.9,43,49,407/-.

5.According to the petitioner, while declarations in Form C were accepted, those made in Form F were rejected.

5.1. Accordingly, the respondent issued notices for submission of statutory Forms to the petitioner qua financial years 2010-11, 2011-12 and 2012-13.

6.It appears that, thereafter, declarations were submitted for the said assessment years, and that, in fact, qua, assessment years 2012-13, the petitioner had to approach this Court by way of a writ petition. This Court vide order dated 25.06.2015, passed in W.P.No.7259 of 2015, directed the respondent to accept the declarations made in Form C and F.

7.The petitioner, as indicated above, in the present writ petition, is aggrieved by the fact that the respondent has chosen not to adopt the direction issued by this Court for Assessment Year 2012-13, vis-a-vis, the assessment year in issue i.e., AY 2013-14.

8.To be noted, via, the impugned order, the respondent has mulcted the petitioner with tax amounting to Rs.1,34,46,430/- after making requisite adjustments. A perusal of the order would show that the sole reason that the tax has been imposed is that the petitioner was unable to file the requisite declarations in time.

9.As a matter of fact, the petitioner made a representation, as indicated at the outset, on 19.01.2017, whereby, a request was made to the respondent to accept in original "F" Forms of a cumulative value of Rs.5,79,00,871/-. The respondent, however, vide notice dated 23.01.2017, has rejected the said representation, as the Forms were not filed in time, despite opportunity.

10.Mr.Derrick Sam, who appears on behalf of the petitioner says that the respondent has requisite power to accept the declaration Forms, even at this stage and, for this purpose, seeks to place reliance on Rule 12(7) of the Central Sales Tax (Registration and turnover) Rules, 1957.

10.1.Furthermore, as indicated above, learned counsel also seeks to place reliance on the judgment dated 25.06.2015 passed in W.P.No.7259 of 2015.

11.Ms.Reena Iyswarya, who appears for the respondent, on the other hand, says that the issue raised in the writ petition can be addressed in an appeal.

11.1.Learned counsel, therefore, says that no indulgence ought to be shown to the petitioner.

12.Having heard the learned counsels appearing for the parties and perused the record, according to me, Rule 12 (7) of the Central Sales Tax (Registration and turnover) Rules, 1957, comes to the aid of the petitioner. The said Rule reads as follows:

> "(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."

13.The petitioner's explanation qua delay, is that, since, declarations had to be collected from dealers in various States, it took time. It is asserted that since the declarations are genuine, the same ought to be considered.

14.I am inclined to accept the submissions advanced by the petitioner with regard to the delay, especially, on account of the fact that the Rule itself encapsulates the principle that, if, declarations are filed, they should be accepted unless the request made is delayed beyond reasonable time and without sufficient cause. Acceptance of genuine declarations should be the norm and not an exception, so that, the dealers are not put to unnecessary trouble and deprived of their legitimate benefits. As a matter of fact, the Assessing Officer, should concentrate more on whether or not, the declarations filed are original and genuine, rather than, adopt a pedantic approach, vis-a-vis, the time frame, within which, declarations are to be filed. Such an approach will stem the flow of cases to this Court.

15.In these circumstances, the impugned assessment order and the notices dated 22.12.2016 and 23.01.2017 for each of the assessment years, are set aside, with a direction that the authorised representative of the petitioner will appear before the respondent on 28.02.2017 at 11.00a.m. On the said date, the authorised representative of the petitioner will tender in original declaration Forms(i.e. Forms F and C). The respondent will also accord personal hearing to the authorised representative of the petitioner. It is only thereafter, that the respondent, will pass a fresh order, in the matter.

15.1.In case, for any reason, the date fixed above is not convenient to the respondent, he will be at liberty to fix another date, which will be proximate to the date adverted to above.

16.The writ petitions are disposed of in terms of the aforesaid directions. Consequently, the connected pending application is also closed. However, there shall be no order as to costs.

sd/
Assistant Registrar(CS VI)

/true copy/

Sub Assistant Registrar

To

The Deputy Commercial Tax Officer - II
Office of the Commercial Tax Officer,
2nd Floor, CT Complex, 100 Feet Road,
Ellapanchavady, Puducherry - 605 005.

+1cc to Mr.Hari Radhakrishnan, Advocate SR.No.9462
+1cc to the Government Pleader SR.No.9208.

W.P.Nos.3394 and 3395 of 2017
And
W.M.P.No.3377 of 2017

RS1(CO)
GN(17/02/2017)