IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.9.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WRIT PETITION NOS.24412 & 24413 OF 2017
& WMP.Nos.25807 & 25808 of 2017

M/s.Sivaprakasam Agencies, rep.by its Proprietor B.Suraj Ganesh ... Petitioner in WP.24412 of 2017

M/s.J.Kay Agencies, rep.by its Authorized Representative P.Muthukrishnan ... Petitioner in WP.24413 of 2017

Vs

Deputy Commercial Tax Officer-II, Commercial Taxes Department Puducherry. ...Respondent in WP.24412 of 2017

Commercial Tax Officer-I, Commercial Taxes Department, Puducherry. ...Respondent in WP.24413 of 2017

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Mandamus directing the respective respondent to issue C Form Declarations to the respective petitioner through on-line by unlocking the facility respectively in

(i) TIN/CST No.34400004317 and the present GST No. 34BCVPS2315C1ZM (WP.No.24412 of 2017); and

(ii) TIN No.34590001060 and the present GST No.34ABQPV4113L1Z8 (WP.No.24413 of 2017).

For Petitioners : Mr.L.Chandra Kumar for Mr.K.M.Balaji

For Respondents : Mr.J.Kumaran, Government Advocate (Puducherry)

COMMON ORDER

Mr.J.Kumaran, learned Government Advocate (Puducherry) accepts notice for the respondents. Heard both. Though the petitioners in both the writ petitions are two different dealers registered on the files of the respective respondent under the provisions of the Puducherry Value Added Tax Act, 2007 and the Puducherry General Sales Tax Act, 1967, as the relief sought for in both the writ petitions is identical, the writ petitions are taken up for joint disposal and disposed of by this common order.

2. The petitioners seek a direction to the respondent to issue C declaration forms to them through on-line by unlocking the facility in the corresponding tax payer identification number and the general sales tax number.

3. The petitioners were assessed to tax for the assessment years 2006-07, 2007-08 and 2008-09 by orders respectively dated 26.7.2010, 30.6.2010 and 30.6.2010 (in respect of the petitioner in WP.No.24412 of 2017) and for the assessment years 2000-01, 2001-02 and 2002-03 by orders respectively dated 10.1.2002, 12.7.2006 and 12.7.2006 (in respect of the petitioner in WP.No.24413 of 2017).

4. It is not in dispute that that in both the cases, the respective petitioner remitted the tax immediately after the revision notices were served by the respondent. Nevertheless, the Assessing Officer imposed penalty on the petitioners under Section 24(3) of the said Act. These assessment orders were put to challenge by the respective petitioner by filing appeals before the Appellate Assistant Commissioner (CT), Commercial Taxes Department, Puducherry in Appeal Nos.2 and 3/PGST/2010-11/AAC and Appeal Nos. 4 and 5/PVAT/2010-11/AAC (WP.No.24412 of 2017) as well as Appeal Nos.7 to 9/ PGST/2010-11/AAC (WP.No.24413 of 2017).

5. The Appellate Authority, while confirming the orders passed by the Assessing Officer, noted that the petitioners had paid tax due as per the respective assessment orders and that the dealers signed in every page of the C Form and its annexures with details of invoice-wise purchase of petroleum products for re-sale in Puducherry. However, the Appellate Authority rendered a finding that since the petitioners opted to pay tax determined only after the Assessing Officer issued the revision notices, no interference was called for with the assessment orders and accordingly, dismissed the appeals.

6. As against the orders of the Appellate Authority, the petitioners preferred second appeals before the Puducherry Value

Added Tax Appellate Tribunal in Tax Appeal Nos.23 to 26 of 2017 as well as 29 to 31 of 2017 respectively. Along with the appeals, the petitioner filed petitions for grant of interim stay in I.A.Nos.1321 to 1324 of 2017 as well as 1399 to 1401 of 2017 respectively.

7. As on date, the second appeals are pending before the Tribunal along with stay petitions. It appears that the Tribunal has not passed any separate orders in the stay petitions. While so, the petitioners made a request to the respective respondent vide separate representations dated 04.9.2017 to issue C Form declarations stating that the non issuance of C Form declarations would put them to irreparable loss, hardship and difficulty. Since their representations are not yet considered, the petitioners are before this Court.

8. It is relevant to point out at this juncture that somewhat an identical case was heard and decided by this Court in M/s.Sri Harish Agencies Vs. ACTO-II, Puducherry (WP.No.18966 of 2017 dated 08.9.2017), in which, the relevant portions read as under :

> "6. It cannot be disputed that the respondent is empowered to withhold the C Form declarations, as the provisions of the Puducherry Value Added Tax Act provided for the same. When identical relief was sought for in a batch of cases, which were ultimately decided by the Hon'ble Division Bench in the case of M.Amirtham Petroleum Agency Vs. Additional DCTO-IW, Puducherry [W.P.No.15804 of 2014 etc. cases dated 07.4.2016], the Hon'ble Division Bench of this Court upheld the power of the respondent to withhold the C Form declarations in respect of the defaulting dealer and the State of Puducherry is empowered to adopt different modes for recovery of tax and penalty and one such mode was to withhold the C Form declarations, which has a statutory backing in the light of Section 43(1) of the Puducherry Value Added Tax Act.
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> 7. This legal position cannot be disputed by the petitioner nor the statutory power vested with the respondent in withholding the C Form declarations. But, it has to be seen as to whether the respondent would be justified in withholding the C Form declarations in the petitioner's case.
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> 8. As pointed out earlier, the Appellate

Authority as well as the Assessing Authority accepted the fact that the petitioner remitted the tax. However, the Assessing Officer sought to justify the orders levying penalty. Unfortunately, the Appellate Assistant Commissioner did not pass an order in clear terms i.e. to say, the last paragraph of the orders passed by the Appellate Assistant Commissioner is mutually contradictory. However, this error has to be rectified by the Appellate Tribunal, before which, the second appeals are pending in T.A.Nos.14 to 16 of 2017. It is not known as to why the Appellate Tribunal has not taken up for consideration the stay petitions.

9. The petitioner, though entitled to prefer an appeal before the First Appellate Authority against the assessment order, is not required to effect any pre-deposit of penalty amount. If there are tax arrears, then 25% of the disputed tax has to be pre-deposited mandatorily for being entitled to present the appeal. The Statute itself does not provide for any pre-deposit in the case of penalty. In such circumstances, on facts, I find that it is too harsh to withhold the C Form declarations, when the petitioner is entitled to C Form declaration to the tune of Rs.1,40,44,508/- and when, admittedly, the penalty demanded is Rs.97,65,418/-, the issue pertaining to which is pending consideration before the Appellate Tribunal. Therefore, unless and until the Appellate Tribunal takes a decision on the appeal petitions, the correctness of the levy of penalty cannot be said to have attained finality.

10. In the light of the above, the writ petition is disposed of by directing the respondent to release the C Form declarations, to which, the petitioner is eligible. Simultaneously, there will be a direction to the Puducherry Value Added Tax Act Appellate Tribunal, Puducherry to take up for hearing the stay petitions in TMP.Nos.958 to 960 of 2017 and pass orders on merits and in accordance with law, within a period of three weeks from the date of receipt of a copy of this order. The further proceedings that could be taken by the

respondent shall be subject to the orders and directions to be issued by the Appellate Tribunal. No costs.

11. In fact, this Court upheld the power of the respondent to withhold the C Form declarations, as the respondent is statutorily empowered to do so and the Hon'ble Division Bench has also upheld the said power. It is made clear that this order shall not be treated as a precedent and it has been passed in the light of peculiar facts and circumstances of this case. It is also made clear that if the petitioner commits any default in payment of tax, then it is open to the respondent to take stringent action against the petitioner dealer."

9. In the light of the above, the writ petitions are disposed of by directing the respective respondent to release the C Form declarations, to which, the petitioners are eligible. Simultaneously, there will be a direction to the Puducherry Value Added Tax Act Appellate Tribunal, Puducherry to take up for hearing the stay petitions in I.A.Nos.1321 to 1324 and 1399 to 1401 of 2017 and pass orders on merits and in accordance with law, within a period of three weeks from the date of receipt of a copy of this order. The further proceedings that could be taken by the respective respondent shall be subject to the orders and directions to be issued by the Appellate Tribunal. No costs. Consequently, the above WMPs are closed.

10. In fact, this Court upheld the power of the respondents to withhold the C Form declarations, as the respondents are statutorily empowered to do so and the Hon'ble Division Bench of this Court has also upheld the said power. It is made clear that this order shall not be treated as a precedent and it has been passed in the light of peculiar facts and circumstances of this case. It is also made clear that if the petitioners commit any default in payment of tax, then it is open to the respective respondent to take stringent action against the petitioners - dealers.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Deputy Commercial Tax Officer-II,
Commercial Taxes Department,
Puducherry.

2.The Commercial Tax Officer-I,
Commercial Taxes Department,
Puducherry.

+2cc's to Mr.K.M.Balaji, Advocate, S.R.Nos.66098 & 66099
+1cc to the Government Pleader, S.R.No.66281

W.P.Nos.24412 & 24413 of 2017
&
WMP.Nos.25807 & 25808 of 2017

CS V
CA(13/09/2017)