IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P. No.24648 of 2017
&
W.M.P.No.26009 of 2017

M/s. Santhosh Agencies,
rep.by its proprietor,
A. Murugesan,
R.S.No.22/2 Pondy Mylam Road,
Sedarpet,
Puduchery- 605 111. ... Petitioner

Vs

The Commercial Tax officer -I
Commercial Taxes Department
Puduchery. ... Respondent

Prayer: Petition under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus directing the respondent to issue C Form declaration by unlocking the on-line facility to the petitioner in TIN No.34350000901 and the present GST No.34AANPM8455E1ZG.

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

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

O R D E R

Mr.J.Kumaran, learned Government Advocate (Puducherry) accepts notice for the respondent.

2. Heard both sides.

3. The petitioner seeks 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.

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4. The petitioner is assessed to tax for the assessment year 2000-01 by order dated 12.07.2006.

5. It is not in dispute that the petitioner paid the tax even before the assessment order. However, the Assessing Officer imposed penalty on the petitioner under Section 18(3) of the said Act. This assessment order was put to challenge by the petitioner by filing appeal before the Appellate Assistant Commissioner (CT), Commercial Taxes Department, Puducherry in Appeal No.6/PGST/2010-11/AAC.

6. The Appellate Authority, while confirming the orders passed by the Assessing Officer, noted that the petitioner had paid the entire tax as per the assessment order and that the dealer has accepted in writing to pay to Government the tax due as per the notice of the Assessing Officer only after the findings of suppression of turnover made by the Assessing Officer and hence the Assessing Officer had imposed penalty and the Appellate Authority rendered a finding that since the petitioners opted to pay tax determined only after the findings of suppression of turnover made by the Assessing Officer, no interference was called for with the assessment order and accordingly, dismissed the appeal.

7. As against the order of the Appellate Authority, the petitioner preferred second appeal before the Puducherry Value Added Tax Appellate Tribunal in Tax Appeal Nos.33 of 2017. Along with the appeal, the petitioner filed petition for grant of interim stay in I.A.No.1419 of 2017.

8. As on date, the second appeal is pending before the Tribunal along with stay petition. It appears that the Tribunal has not passed any separate order in the stay petition. While so, the petitioner made a request to the respondent vide representation dated 07.09.2017 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 representation is not yet considered, the petitioner is before this Court.

9. 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

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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.

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.

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.

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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

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> 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.
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> 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.
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> 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."

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.

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Simultaneously, there will be a direction to the Puducherry Value Added Tax Act Appellate Tribunal, Puducherry to take up for hearing the stay petition in I.A.No.1419 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. Consequently, the above WMP is closed.

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 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 petitioner commit any default in payment of tax, then it is open to the respondent to take stringent action against the petitioner - dealer.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sli

To

The Commercial Tax officer -I
Commercial Taxes Department
Puduchery.

+1cc to Mr.K.M.Balaji, Advocate, S.R.No.67390
+1cc to the Government Pleader(P), S.R.No.64518

W.P. No.24648 of 2017

MP(CO)
CA(18/09/2017)

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