IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.10.2017

CORAM

The Hon'ble Mr.Justice T.S.Sivagnanam

W.P.No.26783 of 2017

M/s.Arun Agencies
Rep. by proprietor
Mr.P.Nagapushanam ... Petitioner

Vs.

The Commercial Tax Officer
Commercial Tax Department-II
Puducherry ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondent to issue C form declarations to the petitioner through on-line by unlocking the facility respectively in TIN No.34160004255 and the present GST No.34AESPN5193F1Z3.

For Petitioner : Mr.A.N.R.Jayaprathap
For Respondent : Mr.J.Kumaran
Government Advocate

O R D E R

Heard Mr.A.N.R. Jayaprathap, the learned counsel appearing for the petitioner and Mr.J.Kumaran, the learned Government Advocate, accepting notice on behalf of the respondent. With the consent of the learned counsel appearing on either side, this Writ Petition is taken up for disposal.

2. The petitioner seeks for a direction upon the respondent to issue 'C' Form declaration to the petitioner through the online, by unlocking the facility.

3. The assessment under the Puducherry Value Added Tax Act, 2007 for the assessment year 2007-2008 was completed by the assessment order, dated 23.09.2009 and for the year 2008-2009, by assessment order dated 04.08.2010. For each of the years, two assessment orders have been passed, as the petitioner has been assessed for two different spells in the same assessment year.

4. The petitioner preferred Appeals as against the said assessments, and the Appellate Authority dismissed the Appeals by orders dated 24.04.2017 and 21.04.2017 respectively. The challenge made by the petitioner was only with regard to **tax and*** penalty, as the petitioner had already remitted the taxes. As against the orders passed in the Appeals, the petitioner preferred further Appeal to the Puducherry Value Added Tax Appellate Tribunal (hereinafter, referred to as 'Tribunal') on 16.06.2017, which was taken on file, in **I.A.No.1097 of 2017 in T.A.No.19 of 2017 (PGST/07-08) I.A.NO.1386/2017 in T.A.No.20 of 2017 (PVAT/07-08), I.A.NO.1387 of 2017 in T.A.No.21 of 2017 (PVAT/08-09) and I.A.NO.1388 of 2017 in T.A.No.22 of 2017 (PVAT/09-10)*** in which, the petitioner filed a Stay Petition, praying for stay of the disputed penalty. The arguments in the Stay Petition is over, and orders were reserved in the Stay Petition. In the meantime, the Presiding Officer of the Tribunal retired from services on attaining the age of superannuation. Therefore, it is stated that, till date, no orders have been passed in the Stay Petition. In the meantime, the respondent has refused to issue 'C' Form declaration, and such online facility has been locked. This has prompted the petitioner to approach this Court.

5. In some what an identical circumstances, this Court considered the issue as to whether the issuance of 'C' forms could be stopped for the reason that the Appeals were not disposed by the Appellate Authority, in the case of (M/s.Sivaprakasam Agencies and another Vs. DCTO Puducherry and another) in W.P.Nos.24412 and 24413 of 2017. After taking note of the power conferred under the Puducherry VAT Act to withhold 'C' Form Declarations, this Court found that, there has been no justification to withhold 'C' Form Declarations, solely on the ground that the Appeal Petition filed by the petitioner as against the imposition of penalty is yet to be disposed of. Accordingly, the said Writ Petitions were disposed, by a common order, dated 12.09.2017, directing the respective Assessing Officer to release 'C' Forms to the petitioner therein, if they are eligible, with a direction to the Appellate Tribunal to taken up hearing of the Stay Petition, and pass orders giving liberty to the Assessing Officer to take further action subject to the orders passed by the Appellate Tribunal. The case on hand is no different, and similar directions could be issued in the present case also.

6. In the light of the above, the Writ Petition is disposed of, by directing the respondent to issue 'C' Form declaration to the petitioner, by unlocking the on-line facility, and the Tribunal is directed to expedite the disposal of the Appeals filed by the petitioner against the orders

passed by the Appellate Assistant Commissioner, and further action can be initiated by the respondent after the Appeals filed by the petitioner are disposed of by the Tribunal. No costs.

Sd/-
Asst.Registrar (CS VIII)
dt.23.10.17

Corrected as per order of this
Court dated 31.10.2017 made in
WP.No.26783/17

Sd/-
Assistant Registrar(CS-III)
dt. 1.11.2017

/true copy/

Sub Asst. Registrar

To

1.The Commercial Tax Officer
Commercial Tax Department-II
Puducherry

To be substituted to the order already despatched on 24.10.2017

2.The Registrar,
Puducherry Value Added Tax Appellate Tribunal,
Puducherry

+1cc to M/s.A.N.R.Jayaprathap, Advocate **sr.76763***

W.P.No.26783 of 2017

cp(co)
ss(23/10/2017)
EU 02.11.2017