IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2017

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.1772 of 2017
&
W.M.P.No.1756 of 2017

M/s.Mcnally Bharath Engineering Company Ltd.,
(Represented by its Vice President (Finance & Accounts)
No.42-A, Ezhaimariamman Koil Street
Muthialpet, Puducherry- 605 003 ... Petitioner

vs

1. The Commercial Tax Officer
Karaikal Assessment Circle
1st Floor, Perunthalaivar Kamarajar Administrative Complex
Nagore Road, Mathagadi
Karaikal- 609 602
Puducherry

2.M/s.Marg Ltd.,
No.81/A First Floor
Maideen Palli Street
Karaikal, Puducherry

3.The Commercial Tax Officer-I
2nd Floor, Commercial Taxes Complex
100 Feet Road, Pudupalayam
Ellaipillaichavady
Puducherry – 605 005

4.Appellate Assistant Commissioner (CT)
3rd Floor, Commercial Taxes Complex
100 Feet Road, Pudupalayam
Ellaipillaichavady
Puducherry – 605 005

5.Commissioner of Commercial Tax
1st Floor
100 Feet Road
Ellaipillaichavady
Puducherry – 605 005

6.Government of Puducherry
Represented by its Secretary to Govt. (CT)
Beach Road, French Consulate Office
Puducherry- 605 001 ... Respondents

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus directing the 1st respondent to issue the Statutory C Forms to the petitioner for the assessment years 2011-12 to 2013-14.

For Petitioner : Mr.Raghavan Ramabadran

For Respondents : Mr.T.P.Manoharan
Senior counsel
for Mr.J.Kumaran
Govt. Advocate for R1, R3 to R6
Mr.H.Imbhiaz Ahmed for R2

O R D E R

This writ petition has been filed praying for issuance of writ of mandamus to direct the first respondent to issue Statutory C Forms under Central Sales Tax Act, 1956 for three Assessment years 2011-12 to 2013-14.

2. The petitioner's case is that they are engaged in the business of executing turnkey solutions in the area of power, steel, Aluminium, material handling, Mineral Beneficiation, Pneumatic handling of powdered materials etc., and are registered on the file of the first respondent under the provisions of the Puducherry Valued Added Tax as well as the Central Sales Tax Act. The petitioner is stated to have entered into a contract with the second respondent on 10.09.2010, which is also a registered dealer in the Union Territory of Puducherry under the provisions of Central Sales Tax Act. According to the petitioner, the agreement is for execution of project for design, supply, erection, commissioning and testing of the conveyor package.

3. The petitioner would state that they have duly declared interstate purchases and transit sales under Section 6(2) in the returns filed under the CST Act for the relevant years and they are awaiting issuance of Form C declarations by the second respondent. The third respondent issued notice dated 16.02.2015 proposing to deny the exemption granted for transit sales under Section 6(2) on the ground that the petitioner has not filed the

Statutory Forms C/E1 in support of such exemption claimed. The petitioner's case is that they were informed by the second respondent that they are unable to generate online Form C Declaration on account of non-recognition of the same by the Union Territory.

4. It appears that on account of the insistence made by the petitioner for issuance of Form C Declaration, the second respondent made a representation to the 5th respondent on 09.03.2015 pointing out that they are unable to generate Form C Declaration online. Since the petitioner was unable to produce Form C Declaration, the third respondent passed assessment orders dated 10.04.2015 by confirming the proposals made in his notice dated 16.02.2015. Against the Assessment Orders, the petitioner filed three appeals before the Appellate Authority and the three appeals have been dismissed by common order dated 12.06.2017 which was challenged by the petitioner in W.P.Nos.18306 to 18308 of 2017, which has been disposed of by this Court on 06.12.2017 with a direction to the petitioner to file appellate remedy available under the Act. The petitioner's case is that in spite of representations given by the second respondent for issuance of Form C Declaration, the Authority have not taken any action. The petitioner, being aggrieved because of that, have filed this writ petition for the aforesaid relief. The writ petition was entertained on 25.01.2017.

5. When the matters were pending before this Court, on 18.09.2017, the petitioner had filed a miscellaneous petition in W.M.P.No.2707 of 2017 to amend the prayer in the writ petition to direct the first respondent to issue Statutory C Form declaration to the second respondent as against the original prayer sought for by the petitioner to direct the first respondent to issue C forms to the petitioner. In the meantime, the request made by the second respondent vide letters dated 28.03.2015 and 07.08.2015 was considered by the first respondent and an order has been passed on 29.11.2017 and communicated to the second respondent, whereby the request made by the second respondent for issuance of C Forms were held to be not maintainable and the request has been rejected.

6. In the given facts and circumstances it has to be seen whether the writ petition is maintainable and whether the petitioner should be permitted to prosecute the writ petition for the proposed amended relief. In support of the contentions raised by the writ petitioner with regard to maintainability of the writ petition, reliance was placed on the decision of the

Division Bench of this Court in M/s.Amurtham Petroleum Agency Vs. The Additional Deputy Commercial Tax. Puducherry reported in 2016-VIL-254-Madras, wherein it is pointed out that in the said batch of cases, one of the writ petitioners was the Indian Oil Corporation Limited, who were entitled to claim C-Form declaration. Their dealer, who were impleaded as fourth respondent in the writ petition, filed a writ petition and sought writ of mandamus to direct the first respondent to issue Form C Declaration to the fourth respondent in the said writ petition. The Hon'ble Division Bench considered the issue relating to locus standi and in Paragraph 30 of the judgment, it was observed that it is not open to the Government of Puducherry to contend that they have nothing to do with the Oil Corporations and that these Corporations have no locus to question the refusal of the Puducherry Authorities to issue 'C' form declarations. Relying on these observations the learned counsel for the petitioner would submit that the writ petition is maintainable and the petitioner be permitted to amend the prayer. As rightly pointed out by the learned senior counsel appearing for the official respondents in Paragraph 90 of the judgment, the Hon'ble Division Bench held that when the authorised dealers have committed default, which is also not recoverable from these oil corporations, they cannot seek the issuance of a writ of mandamus to compel the issue of C-Declaration Forms. Therefore, it has to be held that this writ petition is not maintainable at the instance of the petitioner, both for the relief sought and the amendment prayed for.

7. It may not be necessary for this Court to delve on this issue any further on account of the factual turn of events which have taken place during the pendency of the writ petition. Assuming if the amendment to the prayer as sought for by the petitioner is to be considered and granted, then it would be in direct conflict to order passed by the respondent rejecting the representation made by the second respondent to issue Form C declaration as such request made by the second respondent has been rejected by the first respondent vide order dated 29.11.2017 and communicated to the second respondent. As long as the order remains in tact, the question of considering the prayer for an amended relief does not arise, that too, at the instance of the writ petitioner.

8. Thus, for the above reasons, neither the prayer as sought for by the petitioner can be granted nor the amendment sought for can be permitted. Hence, W.P.No.1772 of 2017 and W.M.P.No.2707 of 2017 are dismissed. Interim orders are vacated. However, dismissal of this writ petition will not

stand in the way of the writ petitioner working out the other remedies available to them in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

gpa

To

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Secretary to Govt. (CT)
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+ 1 cc to M/s.Lakshmimumaran, Advocate,SR.86989
+ 1 cc to The Govt.Pleader(Taxes), SR.87509

W.P.No.1772 of 2017 &
W.M.P.No.1756 of 2017

nr 12/01/2018