In the High Court of Judicature at Madras

Dated : 08.9.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.18966 of 2017

M/s.Sri Harish Agencies, rep.by
its Sole Proprietor J.Ramakreshnan ...Petitioner

Vs

The Assistant Commercial Tax
Officer-II, Puducherry. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus directing the respondent to issue C Declaration Forms continuously to the petitioner to enable them to run the business.

For Petitioner : Mr.K.Govi Ganesan
For Respondent : Mr.K.R.Harin, AGP (P)

ORDER

Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner seeks a direction to the respondent to issue C declaration forms continuously to enable them to effectively run their business of dealership in petroleum products.

3. The petitioner is a registered dealer on the file of the respondent under the provisions of the Puducherry General Sales Tax Act and the Puducherry Value Added Tax Act. The assessments for the years 2006-07 and 2007-08 under the Puducherry General Sales Tax Act and the Puducherry Value Added Tax Act were completed and the respondent determined the taxable turnover by passing orders of assessment dated 14.1.2011 and 09.3.2011. According to the petitioner, even before passing the assessment orders, they paid the entire tax.

4. However, since the respondent levied penalty at the rate of 150%, the petitioner preferred statutory appeals before the Appellate Authority in A.P.Nos.26 and 27/PGST/2010-11 and 28/PVAT/2009-10. The Appellate Authority, while disposing of the appeals by orders dated 15.2.2017, 22.2.2017 and 27.2.2017 respectively, recorded the fact that the petitioner paid the tax

due as per the assessment orders. It was further observed that the petitioner signed in every page of the C Form and its annexure with details of invoice-wise purchase of petroleum products for resale in Puducherry. The Appellate Authority, though stated that there can be no further cause of action for penalty to be levied on the suppressed turnover, rendered a contrary finding that the assessment orders levying penalty are valid in law. It is not clear as to how such finding could have been rendered by the Appellate Assistant Commissioner, when he recorded a finding that the tax due has been paid as per the assessment orders.

5. In any event, as against the orders passed by the Appellate Authority, the petitioner filed second appeals under the Puducherry Value Added Tax Act before the Appellate Tribunal, which have been taken on file as T.A.Nos.14 to 16 of 2017. In the said second appeals, the petitioner filed stay petitions, which have been numbered as TMP.Nos.958 to 960 of 2017. However, till date, no orders have been passed by the Appellate Tribunal in the stay petitions nor the appeals were taken up for disposal. In the meantime, since the C Form declarations have been withheld by the respondent, the petitioner is before this Court.

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.

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.

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.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

RS

To

The Assistant Commercial Tax Officer-II,
Puducherry.

+1cc to Mr.K.Govi Ganesan, Advocate, S.R.No.65528
+1cc to the Government Pleader for Puducherry, S.R.No.65671

WP.No.18966 of 2017

SS(CO)
GN(27/09/2017)