IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2017

CORAM:

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No. 11490 of 2004
and
W.P.M.P.No.13518 of 2004

TVL. TABLETS INDIA LTD.,
Rep. by T.G.Srinivasan,
Deputy General Manager,
No.179, T.H.Road,
Chennai. .. Petitioner

Vs.

1.The Commercial Tax Officer,
Tondiarpet Asst. Circle,
Chennai.

2.The Tamil Nadu Sales Tax
Appellate Tribunal (AB),
Rep. by its Secretary,
City Civil Court Buildings,
Chennai. .. Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, calling for the records on the file of the 2nd respondent in S.T.A.No.754/2001 dated 25.02.2004 quash the proceedings.

For Petitioner : Mr.S.N.Kirubanandam

For Respondents : Mr.K.Venkatesh
Government Advocate for R1

ORDER

Heard Mr.S.N.Kirubanandam, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the first respondent.

2. In this Writ Petition, the petitioner has challenging the order passed by the second respondent dated 25.02.2004. The following three issues arose for consideration before the second respondent:

i. Whether the dis-allowance of claim of deduction on sales return cash discount to the customers for the turnover of Rs.2,60,454/- assessed at 4% is to be sustained or not.

ii. whether the dis allowance of the claim of concessional rate of tax for the states effected to ESI Corporation for Rs.4,99,230/- assessed at 10% is to be sustained or not.

iii. whether the interstate sales of Rs.1,86,109/- assessed at 10% for the non submission of ''c'' Forms is to be sustained or not.

3. So far as issue Nos.1 and 2 are concerned, it is not disputed by the learned counsel for the Revenue that the issues are squarely covered by the decision of the Hon'ble Division Bench of this Court in the assessee's own case in W.P.No.960 of 2005 dated 15.05.2009, wherein, the Division Bench dismissed the writ petition filed by the State against the order passed by the Tamil Nadu Sales Tax Appellate Tribunal in T.A.No.632 if 1994, dated 29.02.2000, following the earlier decision in the case of Medopharm Vs. State of Tamil Nadu reported in (1999) 115 STC 279. The operative portion of the order reads thus:

> 3. The very same issue came up for consideration before the Division Bench of this Court in the case of MEDOPHARM VS. STATE OF TAMIL NADU (1999) 115 STC 279 wherein it was held that on facts it was clear that the goods had been sold to the Government though delivery of the goods was effected to the ESI hospitals pursuant to the directions given by the Officer of the Government who placed the order. Once it was clear that the Government was the buyer of the goods, Government was certainly competent to issue D form through its authorised officer. The Director of Medical Services being the Officer who placed the order, the form signed by him was prima facie in accordance with the requirements of the provisions of the statute and the rules.
>
> 4. The above said observation was made by the Division Bench after considering the statutory provision Section 8(4) of Central Sales Tax Act, 1956 and the facts of the reported case, which read thus:
>
> "2. The opening part of section 8(4) of the Central Sales Tax Act, 1956 reads as under:
>
> "8. Rates of tax on sales in the course of inter-State trade or commerce - (4) The provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the

prescribed authority in the prescribed manner."

Section 8(4)(b) of the Act is relevant for the purposes of this case. It deals with instances of goods sold to the Government and the need for a certificate in the prescribed form duly filled and signed by a duly authorised officer of the Government. If these conditions are satisfied, then the form "D" which is the form prescribed, is required to be accepted.

3. On the facts of these cases, it is clear that the goods had been sold to the Government, though delivery of the goods sold was effected to the E.S.I.hospitals pursuant to the direction given by the officer of the Government who placed the order. After such delivery of the goods, payment therefor was made by the Government, which fact is not in dispute. The fact that the buyer had directed the seller to deliver the goods to a third party does not have the effect of substituting the third party as a buyer, the obligation of the person who ordered the goods to pay for the goods delivered as per his instructions, is unaffected by the mere delivery of the goods to a third party to whom the buyer had directed the delivery. That obligation was clearly recognised by the Government in this case. The payment for the goods supplied was made by the Government. The payment was accounted for, for the purpose of the Government's records as a payment debitable under the head "E.S.I. Scheme". The manner in which the Government maintains its accounts, and the head under which the amounts paid by it were debited does not have any relevance for the purpose of deciding as to whether the Government is the buyer. The order placed by the Government clearly placed the Government in the position of a buyer, and the payment made for the goods supplied clearly establishes that the Government itself had no doubt that it was the buyer of the goods. Once it is clear that the Government is the buyer of the goods, Government certainly is competent to issue the "D" form through its authorised officer. The Director of Medical Services being the officer who placed the order, the form signed by him is prima facie in accordance with the requirements of the provisions of the statute and the rules. There was no dispute as to the competence of the Director of Medical Services to sign the form on behalf of the Government before the authorities below."

5. The facts of the present case are not

different than the cited case. Therefore, following the said judgment, the writ petition is dismissed. However, there is no order as to costs.

4. The above decisions is squarely applicable to issue Nos.1 and 2 and accordingly, this writ petition is allowed to that extent. So far as the third issue is concerned, with regard to the interstate sales assessed at 10% for non submission of "C" Forms, the finding of the second respondent is sustained and to that extent, the writ petition is dismissed.

5. In the result, the writ petition is partly allowed on the terms indicated above. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

vsm
To

1.The Commercial Tax Officer,
Tondiarpet Asst. Circle,
Chennai.

2.The Secretary,
Tamil Nadu Sales Tax
Appellate Tribunal (AB),
City Civil Court Buildings,
Chennai.

+1cc to Special Government Pleader(Taxes) sr.48300

WP.No. 11490 of 2004 and
W.P.M.P.No.13518 of 2004

kj(co)
ss(4/8/2017)