IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 20.02.2017
CORAM
THE HONOURABLE Mr.JUSTICE RAJIV SHAKDHER

W.P.No.35829 of 2016

M/s.Lakshmi Saw Mill,
Rep by its Partner,
Narashia Mansi Patel,
No.42/2, East Coast Road [100 Feet Road],
Mudaliarpet, Puducherry. ... Petitioner

Vs

1.The Commercial Tax Officer,
Commercial Taxes Department,
Puducherry.

2.The Additional Deputy Commercial Tax Officer, IAC,
Commercial Taxes Department,
Puducherry. ... Respondents

Writ Petition filed under Article 226 of The Constitution of India praying for the issuance of Writ of Mandamus to direct the 2nd respondent to issue the 'C' Forms and 'F' Forms as per the requisition of the petitioner.

For Petitioner : Mr.P.Suresh
For Respondents : Mr.J.Kumaran,
Govt. Advocate [Puducherry]

O R D E R

1. The prayer made in the Writ Petition is, to the effect, that the writ of mandamus be issued to the second respondent, to issue C and F Forms, in accordance with law.

2. A perusal of the record would show [which includes the counter affidavit filed on behalf of the respondents] that the C and F Forms have not been issued to the petitioner, on account of the fact that, the Assessment Order dated 08.12.2014 has been passed, which has given rise to a demand for tax and penalty.

3. By virtue of the said Assessment Order, the petitioner has been called upon to pay tax, for a sum of Rs.27,76,416/- and a penalty, equivalent to Rs.55,52,832/-. The petitioner has thus, been called upon to pay, according to respondents, a total sum of Rs.79,80,196/-.

3.1. Admittedly, the petitioner has preferred an appeal, with the Appellate Assistant Commissioner [CT], qua order dated 08.12.2014.

3.2. I am informed by the counsel for the petitioner that an application for stay has also been preferred, before the very same authority, which is pending consideration.

4. Insofar as the respondents are concerned, they have up till now, not acted on the request of the petitioner, for issuance of C and F Forms, apparently, on account of the fact that, tax and penalty, as indicated above, is payable by the petitioner, pursuant to the Assessment Order dated 08.12.2014.

4.1. In support of its stand that, C and F Forms cannot be issued, while amounts are due to the Revenue, inter alia, in the form of tax and penalty, reliance is placed on the provisions of Section 43 of The Puducherry Value Added Tax Act, 2007 [in short "PVAT"].

4.2. Furthermore, the respondents also seek to place reliance on the judgment of the Division Bench of this Court, dated 07.04.2016, passed in a batch of Writ Petitions, the lead Writ Petition being : W.P.No.15804 of 2014, titled M/s.M.Amurtham Petroleum Agency Vs The Additional Deputy Commercial Tax Officer, Puducherry.

4.3. Counsel for the respondents submits that the Special Leave Petition, preferred against the said order, was dismissed, in limine, on 17.08.2016.

5. On the other hand, counsel for the petitioner seeks to place reliance on the following judgments.

i. M/s.Indian Agencies [Regd.] Vs Additional Commissioner of Commercial Taxes, Karnataka, [2005] 2 SCC 129.
ii. Judgment dated 01.02.2016, passed in W.P.[C] 8272/2015 & C.M.No.17432 of 2015, titled M/s.Ingram Micro India Pvt. Ltd. Vs. Commissioner, Department of Trade and Taxes and another.

6. I have heard the learned counsels for the parties and perused the records.

7. According to me, the power of the respondents to withhold Forms C and F, the issuance of which are otherwise, concededly, governed by the provisions of the Central Sales Tax Act, 1956

[in short "CST Act"] and the rules framed thereunder, can if at all be sourced in Section 43 of the PVAT. Section 43[1] of PVAT opens with a non-obstante clause, which, inter alia, provides that notwithstanding the fact that any recovery proceeding has been initiated under the said Act, the Assessing Officer or any other officer, authorised in that regard, shall have power to withhold the issuance of statutory or other declaration forms to a dealer from whom any tax or penalty, interest or any other amount payable under the said Act, is due.

7.1. Therefore, the thrust of the said provision of PVAT, is that, till such time, amounts are payable under the Act, whether, in the form of tax, penalty or interest or any other sum, the concerned officer will have power to withhold the issuance of statutory or other declaration forms.

7.2. The question, which therefore arises for consideration is: whether Section 43 of PVAT is confined to issuance of statutory and declaration forms under the PVAT, as contended by the petitioner or, would it extend to C and F Forms, which are, admittedly, issued under the CST Act and/or the Rules framed thereunder.

8. The respondents, concededly, have not taken a view, one way or the other, with regard to the request of the petitioner for issuance of C and F Forms. It is also an admitted fact that even though an appeal and an application for stay has been filed, neither the apeal nor the application has been disposed of. Therefore, in my view, the best way forward would be, to dispose of the Writ Petition, with the following directions:

i. The respondents will treat the present Writ Petition as a representation and, accordingly, pass orders qua the request of the petitioner, for issuance of C and F Forms.
ii. Before passing any order, the concerned authority would grant personal hearing to the petitioner.
iii. The order so passed, will be a speaking order.
iv. The Appellate Authority in the meanwhile, shall rule upon the appeal. If, for any reason, it is not possible to decide the appeal, a decision will be taken vis-a-vis on the application for stay.
v. The decision rendered in the appeal and/or the stay application, will be placed before the concerned authority, which is required to deal with the request of the petitioner for issuance of C and F Forms.
vi. The Appellate Authority, will give its decision, qua the appeal and/or the stay application preferred by the petitioner, within a period of two [2] weeks from the date of receipt of a copy of the order, after following the requisite mandate of law. The

petitioner will be given a personal hearing by the Appellate Authority as well.

vii. Insofar as the authority, which is concerned with the aspect of taking a decision qua the issuance of C and F Forms, it shall complete the said exercise, within a period of four [4] weeks from the date of receipt of a copy of the order.

9. The Writ Petition is disposed of in terms of the aforementioned directions. There shall, however, be no order as to costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To
1.The Commercial Tax Officer,
Commercial Taxes Department,
Puducherry.

2.The Additional Deputy Commercial Tax Officer, IAC,
Commercial Taxes Department,
Puducherry.

+1 cc to Mr.P.Suresh Advocate sr 10616
+1 cc to Government Pleader Puducherry sr 10746

W.P.No.35829 of 2016

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