IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-27163-2017
Date of Decision: 29.11.2017

M/s DLF Power and Services Ltd., Gurgaon
....Petitioner.

Versus

State of Haryana and others
...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE AMIT RAWAL.**

PRESENT: Mr. Sandeep Goyal, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of mandamus directing the respondents to issue Form 'C' for purchase of diesel from oil marketing companies for generation/distribution of power.

2. The petitioner is engaged in the business of power generation/ distribution and is registered under the provisions of Haryana Value Added Tax Act, 2003 and Central Sales Tax Act, 1956 (in short “the 1956 Act”) vide registration certificates dated 16.1.2017 (Annexure P-1 Colly). Before coming into force the GST law, the inter-state transactions were leviable to tax under the 1956 Act. As per Section 8 of the 1956 Act, rate of tax on sale of such goods was to be charged @ 2% if the said sale was made by one registered dealer to another registered dealer and the purchasing dealer furnishes Form 'C'. The petitioner being a power generation company was entitled to purchase goods for use in generation/distribution of power as per Section 8(3) of the 1956 Act. It had been procuring Forms 'C' (Annexure P-2 Colly) from online utility of State of Haryana and was issuing the same to the suppliers from time to time. After coming into force the GST laws,

the Central Government vide notification dated 5.5.2017 brought the Taxation Laws (Amendment) Act, 2017. The said amendment Act came into operation w.e.f. 1.7.2017 vide notification dated28.6.2017 (Annexure P-4) issued by government of India. Vide letter dated 7.7.2017 (Annexure P-5), the petitioner made a request to respondent No.4 for clarity on procurement of diesel against Form 'C'. The petitioner made purchases of diesel against Form 'C' as it was still finding mention in the definition of 'goods' under the 1956 Act and is clear from the bills (Annexure P-6 Colly) raised by the oil companies. The said arrangement continued till 30.9.2017 and thereafter the oil companies started demanding Form 'C' to be submitted to their respective Assessing Authorities. The HPCL vide email dated 26.10.2017 (Annexure P-7) asked the petitioner to submit Forms 'C' against which a concessional tax of 2% was charged by the supplier in the last quarter. They insisted that 'C' Forms should be arranged at the earliest failing which a debit note of differential tax amount along with applicable interest would be processed. Since the petitioner had failed to submit Forms 'C' to the consignor, they started charging full rate of tax, i.e. 16.75% from the petitioner instead of 2% as is discernible from the invoices dated 25.10.2016 (Annexure P-8 Colly). On 2.8.2017, the petitioner made a request for issuance of Forms 'C' in advance. Thereafter, the petitioner had filed its returns for the quarter ending September, 2017 and made a request on online regarding 'C' Forms. However, instead of issuing Forms 'C', the petitioner received two emails dated 30.10.2017 (Annexure P-9 and P-10, respectively) which provided for the submission of request for Form 'C' with a tracking ID. Accordingly, the counsel of the petitioner sent an email dated 11.11.2017 (Annexure P-11) to respondent No.3 for issuance of Form 'C' for purchase of diesel for the period 1.7.2017, but to no effect. Thereafter, respondent No.3 informed the petitioner that the issue regarding admissibility of 'C' Forms after GST was still under consideration and they were not sure as to whether Form 'C' can be issued or not for purchase of diesel used in generation of power and they have sought clarification vide letter dated 14.11.2017 (Annexure P-12) from respondent No.2. In the trade circular dated 17.11.2017 (Annexure P-13), it has been clarified that Forms 'C' can be used for inter-state purchase of some goods including HSD. However, Form 'C' has not been issued to the petitioner till date. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that for the relief claimed in the writ petition, the petitioner through its counsel has sent an email dated 11.11.2017 (Annexure P-11) to respondent No.3, but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioner, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No.2 to take a decision on the email dated 11.11.2017 (Annexure P-11), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of two weeks from the date of receipt of the certified copy of the order.

(AJAY KUMAR MITTAL)
JUDGE

November 29, 2017 **(AMIT RAWAL)**
gbs **JUDGE**

Whether Speaking/Reasoned **Yes/No**
Whether Reportable **Yes/No**