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HIGH COURT of CHHATTISGARH, BILASPUR

Writ Petition (T) No. 25 of 2016

M/s Mohini Industries through Proprietor Ruchir Mayank S/o Shri Prasoon Kumar, aged about 43 years, 9A, Industrial Area, Rawabhata, P. S. Rawabhata, Raipur, (CG)

---- Petitioner

Versus

1. State of Chhattisgarh through Secretary, Department of Revenue, Mahanadi Bhawan, Capital Complex, New Raipur, P. S. Rakhi, District Raipur (CG)
2. Commercial Tax Officer, Office of Commercial Tax, Circle 4, Raipur (CG)
3. Divisional Deputy Commissioner of Commercial Tax, Commercial Tax Office, Division -1, Raipur (CG)

---- Respondents

Writ Petition (T) No. 26 of 2016

M/s Prakriti Industries through Proprietor Prasoon Kumar S/o Late Shri Surendra Narayan, aged about 69 years, 9B, Industrial Area, Rawabhata, P. S. Rawabhata, Raipur, (CG)

---- Petitioner

Versus

1. State of Chhattisgarh through Secretary, Department of Revenue, Mahanadi Bhawan, Capital Complex, New Raipur, P. S. Rakhi, District Raipur (CG)
2. Commercial Tax Officer, Office of Commercial Tax, Circle 4, Raipur (CG)
3. Divisional Deputy Commissioner of Commercial Tax, Commercial Tax Office, Division -1, Raipur (CG)

---- Respondents

Writ Petition (T) No. 27 of 2016

M/s Prakriti Industries through Proprietor Prasoon Kumar S/o Late Shri Surendra Narayan, aged about 69 years, 9B, Industrial Area, Rawabhata, P. S. Rawabhata, Raipur, (CG)

---- Petitioner

Versus

1. State of Chhattisgarh through Secretary, Department of Revenue, Mahanadi Bhawan, Capital Complex, New Raipur, P. S. Rakhi, District Raipur (CG)
2. Commercial Tax Officer, Office of Commercial Tax, Circle 4, Raipur (CG)
3. Divisional Deputy Commissioner of Commercial Tax, Commercial Tax Office, Division -1, Raipur (CG)

---- Respondents

For Petitioners	:	Shri Rahul Tamaskar, Advocate
For Respondents/State	:	Shri Anand Dadariya, Dy. Govt. Advocate

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Hon'ble Shri Justice P. Sam Koshy

Order On Board

02/02/2018

Since the factual matrix of the three writ petitions is similar, the petitions are being heard and decided by a common order.

2. The challenge in all the three writ petitions is to the order dated 30.08.2014 passed by the Divisional Deputy Commissioner i.e. respondent no.3 in the capacity of a Revisional authority under the provisions of Chhattisgarh Commercial Tax Act, 1994. Challenge is also to the order dated 12.08.2013 passed by the Commercial Tax Officer i.e. respondent no.2. Another fact which is common in these petitions is that the purchasing dealer being the same i.e. M/s Anil Traders at Gondia, Maharashtra.

3. Facts of the case in brief are that the petitioners are manufacturers and sellers of Chlorinated Paraffin, Hydrochloric Acid, Dechloro Phenyl. In the year 2004-05, certain sales were made by each of the petitioners to M/s Anil Traders at Gondia (hereinafter referred as 'purchasing dealer') who in turn is said to have issued Form-C certificate to the petitioners based on which the Central Sales Tax was assessed at a concessional rate of 2%. The assessment order in this regard was passed vide Annexure P-3 in the year 2008. After about 5 years time, it was found that the Form-C certificates provided by the purchasing dealer were defective. Show cause notices in this regard were immediately issued by the respondents to the petitioners vide Annexure P-4. Subsequently, the Authorities issued a demand for additional tax vide order dated 25.03.2013 Annexure P-5. Immediately the petitioners responded to them and intimated that the amount assessed by way of additional tax is not correct as certain adjustments which had to be made have not been made. The Department vide Annexure P-2 dated 12.08.2013 issued the rectified order reducing the amount after making proper adjustments. Subsequently, revision petitions were preferred by the petitioners assailing the order dated 25.03.2013 which stood finally decided vide Annexure P-1 dated 30.08.2014 in the three writ petitions rejecting the revision petitions and holding that the claimants would be entitled to pay additional tax as the Form-C certificate submitted by the purchasing dealer was found to be defective. Since it was a defective Form-C certificate, the petitioners cannot claim the benefit of the payment of Central Sale Tax at a concessional rate and they would be entitled for the tax at the normal rate.

4. Shri Rahul Tamaskar, counsel for the petitioners assailing the revisional order so also the assessment of the additional tax submits that the order impugned is bad in law as no proper enquiry has been made by the Department before assessing the additional tax. Further there is not any ground disclosed as to how the Form-C certificates issued by the purchasing dealer were found to be defective. It was incumbent upon the Department to have first held an enquiry and reached to the conclusion regarding the Form C certificates to be defective. After the Form-C certificates were found to be defective, the Department should have first initiated appropriate action against the purchasing dealer and then should have resorted any recovery proceeding against the present petitioners through the competent assessing authority, failing which the entire action initiated by the respondents would stand vitiated. Counsel for the petitioners submits that the Authority concerned while issuing show-cause notice so also while passing the revisional order has not disclosed any material or ground on the basis of which the Form-C certificates have been declared defective. It is the contention of the counsel for the petitioners that both the revisional order as well as the show-cause notices are silent on this issue. Except for a bald allegation of the Form-C to be defective, how the Form-C certificates were defective, in what manner they were defective and how they were found to be defective was not reflected either in the show-cause notice or in the revisional order. No enquiry whatsoever in this regard has been undertaken by the Department except for the audit objection which was detected during the course of audit in the department. It is also the contention of the counsel for the petitioners that the show cause-notice, the reassessment order and the revisional order do not disclose as to under what circumstance, the petitioners i.e. the selling dealers would be responsible for the wrong committed by the purchasing dealer so far as the payment of additional tax is concerned.

5. Per contra, Shri Anand Dadariya, opposing the petitions submits that it is a case where the defect was found out during the course of audit as there was an audit objection raised by the audit team in respect of Form-C certificates produced by the petitioners claiming for concessional rate of central sale tax. He submits that once when there was an audit objection and immediately thereafter show cause notice was also issued to the petitioners, it was necessary for the petitioners to have cooperated with the Department producing sufficient materials available with them to show that there was no malafide on their part and that if at all, if there was any default, it was at the hand of the purchasing dealer. He further submits that the

petitioners in the instant case remained silent and even after issuance of show-cause notice, they did not respond to the show-cause notice nor did they appear before the Authorities by producing sufficient cogent material to show that they were ignorant so far as the use of defective Form-C certificates are concerned. It is the contention of State counsel that Annexure P-2 dated 12.8.2013 i.e. the final order of reassessment has not been challenged by the petitioners before any authority and therefore, the present writ petitions on this ground also would not be sustainable. It is also the contention of the counsel for the State that since the purchasing dealer in the instant case was located beyond the territorial jurisdiction of the respondent authority, the defect which has been detected so far as the purchasing dealer's Form-C is concerned, has to be recovered from the selling dealer as it was the selling dealer who has been benefited by using the said Form-C to the extent of payment of tax being made at the concessional rate of 2% or else he would have been required to pay tax at the normal rate of 10%. It is also the contention of the counsel for the State that when the Form-C certificates were issued by M/s Anil traders at Gondia, it was the responsibility of the petitioners to have first verified those documents before putting them into use for claiming concessional rate of tax.

6. As regards the legal position as it stands, it would be relevant at this juncture to refer to the judgment of the Supreme Court in the case of **State of Madras Vs. Radio and Electricals Ltd.**[1] wherein while deciding the bunch of appeals, the Hon'ble Supreme Court in paragraph-14 has held as under:

> "14. ….Parliament with a view to reduce the burden on the consumer arising out of multiple taxation has provided, in respect of sales of declared goods which have special importance in inter-State trade or commerce, and other classes of goods which are purchased at an intermediate stage in the stream of trade or commerce, prescribed low rates of taxation,

1 AIR 1967 SC 234

when transactions take place in the course of inter-State trade or commerce.

Indisputably the seller can have in these transactions no control over the purchaser. He has to rely upon the representations made to him. He must satisfy himself that the purchaser is a registered dealer, and the goods purchased are specified in his certificates but his duty extends no further. If he is satisfied on these two matters, on a representation made to him in the manner prescribed by the Rules and the representation is recorded in the certificate in Form 'C' the selling dealer is under no further obligation to see to the application of the goods for the purpose for which it was represented that the goods were intended to be used. If the purchasing dealer misapplies the goods he incurs a penalty under Section 10. That penalty is incurred by the purchasing dealer and cannot be visited upon the selling dealer.

The selling dealer is under the Act authorised to collect from the purchasing dealer the amount payable by him as tax on the transaction, and he can collect that amount only in the light of the declaration mentioned in the certificate in Form 'C'. He cannot hold an enquiry whether the notified authority who issued the certificate of registration acted properly, or ascertain whether the purchaser, notwithstanding the declaration, was likely to use the goods for a purpose other than the purpose mentioned in the certificate in Form 'C'.

There is nothing in the Act or the Rules that for infraction of the law committed by the purchasing dealer by misapplication of the goods after he purchased them, or for any fraudulent misrepresentation by him, penalty may be visited upon the selling dealer."

7. Relying upon the said judgment, the Division Bench of Delhi High Court in the case of **Milk Food Ltd. V. Commissioner, VAT and Others**[2], in paragraph-26, dealing on a similar issue held as under:

"26. …...In several judgments, both of the Supreme Court and of the High Courts which we have referred to while disposing of the appeal in STA No.14/2011, it has been held that it was for the Sales Tax authorities to establish that the certificates were false to the knowledge of the selling dealer or that there was collusion between the selling and purchasing dealers. The Supreme Court recognised that the seller can have no control over the purchaser in such transaction and has to necessarily rely upon the representation made to him by the purchasing dealer (State of Madras v. M/s Radio & Electricals Ltd. and Anr.) (supra). According to the Supreme Court, the duty of the selling dealer is only to satisfy himself that the purchaser is a registered dealer and the goods purchased are specified in his registration certificates and no further. He is under no obligation to see that the application of goods for the purpose for which it was represented that they were intended to be used. This indicates that for the acts of the purchasing dealer, the selling dealer

2 (2013) 59 VST 1 (Delhi)

> cannot be held responsible. The ST-1 forms are issued by the sales tax authorities to registered dealers. The selling dealer is accordingly entitled to rely upon the certificates as having been genuinely issued. In A.D.M. Stores and Anr. v. Commissioner of Sales Tax & Ors. (supra) it was held that the inaction, neglect or even a fraud of a registered purchasing dealer cannot result in penalising the innocent selling dealer in the absence of his having been a party to the fraud, deception or misrepresentation. However, if there is evidence or material on record to show the involvement of the selling dealer in the procurement of fake or false ST-1 forms, the penal provisions of section 50 (1) (a) read with section 56 (2) of the Act would come into play."

8. Recently, the Rajasthan High Court in the case of **Ultratech Cement Ltd. v. C.T.O A/E, Jodhpur & Anr.**[3] had an occasion of dealing with a similar issue. While dealing with the issue, Rajasthan High Court took the assistance of an earlier decision of it in the case of Assistant Commissioner, Commercial Taxes v. Metro Appliances Limited reported in 2007 (3) ILR (Raj.) 434 and relied upon paragraphs 8 to 12 which held as under:

> "8. The crux of the matter is as to whether the selling dealer who relied upon the declaration forms furnished to him by another registered dealer, namely, the purchasing dealer, should be proceeded against for recovery of additional or remaining tax at the full rate of tax ignoring the concessional rate of tax based on such declaration forms or is it the purchasing dealer who furnished such declaration forms should be proceeded against for recovery of such additional or balance amount of tax.
> 9. It is true that selling dealer who in law is under as obligation to collect proper rate of sales tax on the goods sold by him collects only the concessional rate of tax in particular circumstances relying on the declaration forms given by the purchasing dealers and such declaration forms in original are furnished by the selling dealer to his assessing authority in support of or justifying the collection of the tax only at the concessional and it is only at a later point of time when assessment procedure is undertaken if some defect in the declaration form is found by the assessing authority of the selling dealer that the concessional rate of tax would not be available, but the question is who should bear the brunt? The obvious and plain answer to the said question is that it is the person who has furnished such declaration form and not the person who has relied upon the same, should bear such brunt or be held responsible for payment of additional tax if any. In the ordinary course of business while dealing with various purchasing dealers, the selling dealer cannot be excepted to hold any detailed inquiry, nor he has any legal obligation to do so under the Act and the Rules, to establish the genuineness, correctness,

3 2015 SCC OnLine Raj 8645

validity or justification on the part of the purchasing dealers to furnish the relevant declaration forms on the strength of which the selling dealer collects only concessional rate of tax from him and not the full rate of tax. Admittedly such declaration forms are issued to the purchasing dealers who are also registered dealers of the same department by the assessing authority having jurisdiction over such purchasing dealers on fulfillment of certain conditions and for particular purposes. A perusal of Rule 23 quoted above clearly lays down the procedure for application, issuance, keeping stock of utilization and surrender of unused declaration forms by the registered dealer who gets them issued. If there is any defect in such declaration forms or in law it is later on found that such registered dealer is not entitled to use such declaration forms for particular purposes, then it is that dealer himself who ought to be held responsible for such lacunae in his legal entitlement to furnish such declaration forms to the selling dealer to get the benefit of the concessional rate of tax. It is purchasing dealer who really receives the benefit of the concessional rate of tax and not the selling dealer. The selling dealer merely collects concessional rate of tax on the strength of such declaration forms furnished by the purchasing dealers and not otherwise. If such declaration forms are not furnished by the purchasing dealers, the selling dealer could always collect the full rate of tax from the purchasing dealer. Therefore, it is the purchasing dealer who leads the selling dealer to believe in the ordinary course of business that the purchasing dealer is a registered dealer and he is entitled to make such purchases from him at the concessional rate of tax under the relevant provisions of law and relevant notification on the strength of such declaration forms. Therefore, if upon scrutiny, such declaration forms are found to be have not been legally or properly used by the purchasing dealer, it is the purchasing dealer alone who can be proceeded against in law and not the selling dealer.

10. The question that when the assessing authority of the selling dealer embarks upon the inquiry during his assessment and finds that such declaration forms are not proper or are defective or that the purchasing dealer was not legally entitled to give such declaration forms to avail concessional rate of tax, the remedy with such assessing authority is not to impose the difference additional tax upon the selling dealer himself but the remedy lies in making a report to the assessing authority having jurisdiction over the purchasing dealer in question to proceed against such purchasing dealer for recovery of the difference amount of tax. Like in the present case, if the assessing authority is allowed to proceed to recover such difference tax from the selling dealer himself without even calling upon the purchasing dealer to establish his legal right to issue such declaration forms for making the particular purchases in question, it would be travesty of the principles of natural justice and law if such difference tax is allowed to be imposed and recovered form the selling dealer. There is no justification for compelling the selling dealer to pay such difference or additional tax denying the concessional rate of tax in such cases, unless of course there is a case of collusion between the purchasing dealer and the selling dealer made out by the Revenue authorities and which is established beyond reasonable doubt after holding inquiry. Even in the case of

collusion between the parties, it is either of the dealer, either the selling dealer or the purchasing dealer who can be saddled with such difference tax in case there is an established misuse of declaration forms and it is one of those parties, either of them, who is more at fault who can be saddled with such difference liability. In that case also, the dealer who gets such declaration forms issued from the concerned Revenue authority and furnished such declaration forms without there being a legal entitlement thereto vested in him and thus, defrauded the Revenue of the full rate of tax by availing the concessional rate of tax or exemption in particular transactions that such party would be proceeded against in law.

11. The right of the assessing authority to proceed against the selling dealer in the cases of fraud or collusion is also available only if such allegation is made against the selling dealer with precise particulars and not mere wild allegation or general statement of fraud or collusion can empower the assessing authority to proceed against the selling dealer. But the question is where there is no collusion or fraud played upon by the selling dealer and who bonafidely believes that such purchasing dealer had a legal right to use such declaration forms for availing concessional rate of tax on particular sales of goods, then there would be no justification for proceeding against the selling dealer in such cases. It is not the matter of convenience of the Revenue authorities nor it is a matter that the assessing authority of the selling dealer first happens to embark upon such inquiry and find that particular declaration forms have been misused in particular cases, but is the question of jurisdiction as to upon whom the liability in law for payment of such additional or difference tax should be affixed. In the considered opinion of this court, where there is no fraud or collusion alleged against the selling dealer, it is only the purchasing dealer who deserves to be proceeded against for recovery of the difference tax in case it is found that the declaration forms were not legally valid for the particular sale transaction.

12. In the present case, it also appears that the assessing authority has imposed the additional tax, interest and penalty on the selling dealer even without calling upon the purchasing dealer, the co-operative society of the Police Department and holding any enquiry with regard to their legal entitlement to use the declaration in form ST-17 for purchase of ceiling fans from the assessee, the selling dealer, and merely saying that the co-operative society is not a Government department is not enough. What is exactly the character and composition of such co-operative society, who are its shareholders and members, whether it is running on no profit no loss basis, whether the Government department or the Police Department had full control over it or not, all these may be the relevant that it was or it was not a Government department and whether the declaration forms ST- 17 could legally be issued for purchase of ceiling fans in question or not. No enquiry of this nature appears to have been made by the assessing authority as the impugned assessment order does not narrate any such enquiry into these fact. Therefore, without holding this basic inquiry if the additional

> tax was imposed on the selling dealer, it is all the more unfortunate besides being illegal and unauthorized."

Based upon the aforesaid observation, the Rajasthan High Court in the case of Ultratech Cement Ltd. (supra) had allowed the writ petition leaving open liberty to the Assessing Authority to initiate appropriate proceeding against the purchasing dealer.

9. In the light of the judgments referred in the preceding paragraphs if we take into consideration the contents of the present petitions, it clearly reflects that the respondents have not held any enquiry to determine as to how the Form-C issued by the purchasing dealer is defective. The Form-C has been declared defective only on the basis of the audit report without any sort of enquiry or investigation conducted to ascertain the defect, if any. Further what is also reflected from the records is that at no point of time had there been any proceeding drawn against the purchasing dealer for having submitted the defective Form-C certificate. In the reassessment order and the order passed by the Revisional Court, it has not been decided or determined as to in what manner the Form-C was found to be defective.

10. Thus, in the light of there being no enquiry for deciding Form-C to be defective and there being no proceeding initiated against the purchasing dealer by the respondents and also keeping in view the ratio laid down by the Supreme Court and the different High Courts from the judgments referred in the preceding paragraphs, this Court does not have any hesitation in holding that the orders under challenge in the present writ petitions i.e. reassessment order Annexure P-2 & P-3 and the revisional order Annexure P-1 are not sustainable and deserve to be and are accordingly set aside.

11. Though this Court has set aside these two orders i.e. reassessment order and the revisional order but liberty is left with the State Authority for initiating appropriate proceedings in accordance with the settled legal

position in the light of the contents of the judgments mentioned in the preceding paragraphs.

12. The three writ petitions are accordingly allowed with liberty to the respondents to initiate appropriate proceedings.

Sd/-
(**P. Sam Koshy)**
JUDGE

Bhola