IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.22173 & 22174 of 2018
and
WMP.Nos.25986 & 25987 of 2018

Tvl.Ambi Ply Panels and Doors
Represented by G.Madan Kumar,
Managing Partner
40/173, Reeba Complex, Near Main Market,
Kotagiri. ..Petitioner
(in WP No.22173 of 2018)

Tvl.The Veera Silver Frames
Represented by V.Veera Rajendran
Partner, 40/159, Reba Complex,
Near Main Market, Kotagiri. ..Petitioner
(in WP No.22174 of 2018)

Vs

The Commercial Tax Officer (FAC)
Kotagiri. ..Respondent
(in both WPs)

Writ Petition No.22173 of 2018 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the order of the respondent in CST No.342681/2007-2008 dated 01.08.2018 and quashing the same and consequently, directing the respondent to accept the duplicate Form-C filed by the petitioner.

Writ Petition No.22174 of 2018 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the order of the respondent in CST No.342710/2007-2008 dated 01.08.2018 and quashing the same and consequently, directing the respondent to accept the duplicate Form-C filed by the petitioner.

For Petitioner : Mrs.Naveena D
(in both WPs)

For Respondents: Mr.M.Hariharan
Additional Government Pleader
(in both WPs)

COMMON ORDER

Writ Petition Nos.22173 & 22174 of 2018 are filed against the orders dated 01.08.2018 in rejecting the rectification petitions.

2. The petitioner in both these writ petitions are different Assessees. However, they have raised a common issue in these writ petitions while challenging the impugned orders of rejection.

3. The case of the petitioners in short is as follows:

In respect of the assessment year 2007-2008, the petitioners sold the goods to the registered dealers in other States by way of inter-state sales, by paying CST at the rate of 3% on condition that the C-Forms issued in terms of Section 8(3) of the CST Act, 1956 are to be submitted to the Assessing Authority. The petitioners had submitted all the original C-Forms to the Assessing Authority on 14.02.2008. However, the respondent by orders dated 30.06.2011 & 28.06.2011, confirmed the notices of proposal on the ground that the original C-Forms have not been submitted. The petitioners have informed the respondent through their letters dated 05.08.2011 & 12.11.2011 that all the original C-Forms were submitted. They have also submitted the indemnity bond and attested C-Forms counterfoils. Thus, the petitioners sought for rectification of the orders dated 30.06.2011 and 28.06.2011. However, the respondent has chosen to reject the rectification petitions only on the reason that the original C-Forms were not filed by the petitioners. Hence, these present writ petitions.

4. Separate counter affidavits are filed by the respondent, wherein, it is admitted that the petitioner in each case has filed the original C-Forms to the then Deputy Commercial Tax Officer and that the same was acknowledged in the dealer local delivery note. It is further stated in the counter affidavit that the said Officer had left the file without passing the assessment orders and the original Form-C marked portion submitted by the dealers were misplaced and not traceable in records. It is further stated in the counter affidavit that the dealers have submitted their representations along with duplicate marked portion of C-Forms attested by the respective other State dealer, but they have not filed the duplicate C-Forms obtained from the other State dealer as prescribed under the Rule 12(3) of CST (Registration and Turnover) Rules, 1957.

5. The learned counsel for the petitioner contended that since the respondent has admitted the submission of original C-Forms and that they were lost at the hands of the respondent, the petitioner cannot be found fault with and consequently, duplicate C-Forms furnished by the petitioner should be taken into account and appropriate orders should be passed. In support of her contention, the learned counsel relied on an order passed by this Court in WP Nos.3110 to 3112 of 2015 dated 09.02.2015, wherein under similar circumstances, this Court has permitted the Assessee therein to file duplicate copy of the C-Forms before the Assessing Officer, who in turn, was directed to decide the issue afresh, by accepting the said duplicate copy of the C-Forms.

6. On the other hand, the learned Additional Government Pleader for the respondent contended that furnishing of C-Forms should be only in accordance with the Rule 12(3) of the CST (Registration and Turnover) Rules, 1957 and therefore, the petitioner may be directed to furnish such duplicate C-Forms.

7. Heard both sides.

8. The petitioners herein have made some inter-state sales, by paying CST at the rate of 3% on condition that they should furnish C-Forms issued by the other end dealers. There is no dispute to the fact that the petitioners, along with their returns, furnished those C-Forms in original, since in the counter affidavits, the said fact is admitted. However, those original C-Forms were misplaced by the office of the respondent and are not traceable till today. When such being the admitted position of fact, the respondent is not entitled to harp upon Rule 12(3) of the CST (Registration and Turnover) Rules, 1957 and insist the petitioners to furnish the duplicate C-Forms, as prescribed under the above said Rule. One can understand that when those C-Forms are lost at the hands of the petitioners and that the petitioners seek for producing the duplicate C-Forms in the place of original C-Forms. But, it is not so the case of the petitioners or the respondent. On the other hand, the original C-Forms already filed were admittedly lost by the respondent and therefore, they have to blame themselves for their omission and lapse. Admittedly, the petitioners have filed the duplicate C-Forms, when they made their representation in pursuant to the orders of assessment passed against them. Therefore, the respondents ought to have considered the duplicate C-Forms and pass appropriate orders, based on such C-Forms, as though the petitioners have complied with in furnishing the C-Forms in respect of their inter-state Sales. The very same issue was considered by this Court in the above decision referred to by the learned counsel for the petitioner, wherein, at Paragraph No.7, it has been observed as follows:

"7. From a reading of the above extracted Rule 10(2) of the Central Sales Tax (Tamil Nadu) Rules, it is clear that the petitioner is entitled to file Form of Declaration/Certificate relating to the year at any time before the final assessment of the accounts of that year. In this case, the petitioner has filed 'C' Form in original before the authority of the respondent and an endorsement has also been made by the concerned officer. The contention of the respondent relying upon Rule 12(2) of the Central Sales Tax (Registration and Turnover) Rules, by requiring the petitioner to produce the indemnity bond, cannot be accepted, as the same would be applicable only in case the petitioner had lost the original 'C' Form. The respondent in this case shall accept the duplicate copy of the 'C' Form already filed before them by the petitioner. When the said document filed by the petitioner before the respondent-authority had been misplaced by the respondent-Department, insisting of Declaration by means of indemnity bond, is not correct and there is no duty cast upon the petitioner to file the indemnity bond, when the petitioner has not lost the original of the same and when the petitioner has also not requested by stating that they have misplaced the original document. Admittedly, both the parties admit that the receipt will be in-triplicate and the seller will retain a copy and furnish the original with the Department. It is further stated that the duplicate copy will be given to the petitioner and the petitioner will retain the duplicate copy and produce the original before the authority concerned. When the authority has misplaced the original of the document for whatever be the reason, there is no hard and fast rule to deny the request of the petitioner for accepting the duplicate copy of the document, which is available with the petitioner."

9. Considering the above stated facts and circumstances, this Court is of the view that the petitioners are entitled to succeed in both these writ petitions. Accordingly, both these writ petitions are allowed and the impugned orders are set aside. Consequently, the matter is remitted back to the Assessing Officer for passing fresh orders on the rectification petitions, by considering the duplicate C-Forms already filed by the petitioners. Such exercise shall be done

by the respondent within a period of six weeks from the date of receipt of a copy of this order. Before passing the said order, the respondent shall also give an opportunity of personal hearing to the petitioners. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

mk

To

The Commercial Tax Officer (FAC)
Kotagiri.

+ 2 ccs toMr. Durai Raj, Advocate Sr.80871 & 80872
+ 1 cc to Mr.Special Government Pleader Sr.81481

W.P.Nos.22173 & 22174 of 2018

MG(CO)
EU(14/12/2018)