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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 12142/2018 & CM Nos.47147-48/2018

SURINDER PAL AND SONS-HUF ..... Petitioner

Through : Mr. Ashok K. Manchanda, Adv.

versus

VALUE ADDED TAX OFFICER (WARD 57)
DEPARTMENT OF TRADE & TAXES,
GOVERNMENT OF NCT OF DELHI & ORS. .... Respondents

Through : Mr. Satyakam, ASC with Mr. Mohit Kumar, Adv. for GNCTD.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

<u>O R D E R</u>

% **14.11.2018**

Issue notice to the respondents.

Mr. Satyakam, Additional Standing Counsel accepts notice on behalf of the respondents.

With the consent of learned counsel for the parties, they were heard finally.

The petitioner's complaint is that as a selling dealer, the C Forms, which he relied upon, were rejected and the tax burden increased. He complains that the purchasing dealer from Haryana had issued the C Form on 20.08.2017 covering all transactions (i.e. Bill No.13 dated 03.05.2017 and Bill No.18 dated 27.05.2017). It is submitted that the impugned order of 01.08.2018, rejected the transactions covered by the C Form and directed the dealer petitioner to pay an amount of Rs.22,37,991/-. It is also stated that the subsequent order of 16.08.2018, assessed the turnover for the relevant period without taking into account the C Form and also proceeded to impose a penalty.

Besides other grounds, the petitioner urges that the cancellation of C Forms and the effect given to it was not proceeded by any fair notice or opportunity and secondly, that the cancellation of the C Forms and to the extent that such order was given effect to was without authority of law; in this regard, reliance is placed upon the judgment of this court in *Jain Manufacturing (India) Pvt. Ltd. v. The Commissioner of Value Added Tax & Anr.*, W.P.(C)No.1358/2016 (decided on 01.06.2016).

Ld. counsel for the respondents sought to distinguish the decision in *Jain Manufacturing*. He argued on behalf of the Revenue that the cancellation of the C Form, unlike in *Jain Manufacturing*, was not by the Delhi VAT Authorities but rather by the Haryana authorities and that the Delhi VAT Authorities merely gave effect to the cancellation as they were bound to. It was urged besides that in the absence of the Haryana authorities – who were not impleaded in these proceedings, this court should not proceed to pass any adverse orders setting aside the impugned cancellation. It is apparent from the submissions of the parties as well as the materials which are produced during the course of hearing by the Revenue that the petitioner was not taken into confidence before the adverse order made by the Haryana authorities was given effect to. The least that was expected of the Delhi VAT authorities was to provide minimum opportunity of hearing and pass a reasoned order. Clearly, on that count alone, the impugned cancellation orders which had been given effect to in the manner that the Delhi VAT authorities did, cannot be sustained.

The court is also of the opinion that the observations in *Jain Manufacturing* impinge on the power of an authority to resort to retrospective cancellation of C Forms. This is clear from the following finding :

> *"25. In the present case with their being a valid registration of the purchasing dealer on the date of the transaction and the C-Form having been validly issued on the date it was so issued, there could not have been a retrospective cancellation of the C-Form. At the risk of repetition, it must be observed that there is no statutory power that permits cancellation of a C-Form that has been validly issued, much less retrospectively. The only circumstance perhaps that could lead to the cancellation of a C Form is the failure by the issuing authority to notice the cancellation of the purchasing dealer's CST registration previous to the date of the sale. That would be a case of a purchasing dealer obtaining a C Form by fraudulent means concealing the fact of cancellation of his CST registration. The issuance of a C Form in such instance would be void ab initio since it would not satisfy the requirement of Section 8 (1) of the CST Act read with Section 7 (4) thereof.*

The practical effect of cancellation of C Forms

26. It was submitted by Mr Narayan that there would be a practical difficulty in the DT&T seeking to inform every selling dealer in the country of the cancellation of registration of a purchasing dealer registered under the CST Act in Delhi and that the remedy of the selling dealers in such instance would be to proceed against the purchasing dealers. In the considered view of the Court, if the selling dealer has after making a diligent enquiry confirmed that on the date of the sale the purchasing dealer held a valid CST registration, and is also issued a valid C Form then such selling dealer cannot later be told that the C Form is invalid since the CST registration of the purchasing dealer has been retrospectively cancelled. Where, a selling dealer fails to make diligent enquiries and proceeds to sell goods to a purchasing dealer who does not, on the date of such sale, hold a valid CST registration then such selling dealer cannot later be seen to protest against the cancellation of the C-Form. As observed by the Supreme Court in ***Commissioner of Sales Tax, Delhi v. Shri Krishna Engg.*** *(supra) the selling dealer in such instance will have to pay for his "recklessness".*

27. To answer the problem highlighted by Mr Narayan, the best course of action would be for an authority to cancel the CST registration prospectively and immediately place that information on its website. In such event, there would be no difficulty in the selling dealer being able to verify the validity of the CST registration of the purchasing dealer. However, where the cancellation of the registration and, consequently of the C-Form is sought to be done retrospectively, it would adversely affect the rights of bonafide sellers in other states who proceeded on the basis of the existence of valid CST registration of the purchasing dealer on the date of the inter-se sale. That outcome is not contemplated by the CST Act and the Rules thereunder."

The Revenue's argument that since it did not pass an order cancelling the C Form, like in *Jain Manufacturing* but rather that a third party, outside the jurisdiction of this court, did so, is unpersuasive. As long as the Central enactment is interpreted in a particular manner, by a High Court empowered to do so, the question of the authority, wherever it is located, possessing the power – to wit, the authority to cancel the C Form retrospectively – does not arise. The declaration of the court that the provisions of law – i.e. the Central Sales Tax Act or the Rules do not authorize the concerned authority (or the form issuing authority) to resort to cancellation retrospectively, is one in rem. If the Delhi VAT authorities are permitted to hair split and distinguish the source of its power as one exercised by an authority outside Delhi or that the C Form in the decision was issued by a purchasing dealer and not a selling dealer, the import of the decision would be completely undermined. Consequently, the submission of the counsel for the Delhi VAT authorities that the Haryana authorities had the power or somehow could retrospectively cancel the C Forms, is rejected. If it is stated that no power exists to cancel a C Form retrospectively, no authority at least in Delhi can give effect to such order.

For the above reasons, the impugned orders are hereby set aside and quashed. The respondents are hereby directed to grant an opportunity to the petitioner and complete the assessment in accordance with law having regard to the circumstances of this case, i.e. the supervening event of cancellation of C Form.

This writ petition is disposed of in the above terms.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

NOVEMBER 14, 2018
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