IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2030 OF 2019

H.D. Enterprises ...Petitioner
vs
The State of Maharashtra & Ors. ...Respondents

Shri Shriram Sridharan for Petitioner.
Mr.V.A. Sonpal, Special Counsel with Jyoti Chavan, AGP for Respondents.
Mrs.Kavita Mohad, Deputy Commissioner of State Tax.

CORAM : M.S. SANKLECHA &
S.C. GUPTE, JJ.

DATE : 8 AUGUST 2019

P.C. :

This petition, under Article 226 of the Constitution of India, challenges the refusal of Respondent No.3 – the Deputy Commissioner of State Tax, to issue necessary C-Form under Section 8 of the Central Sales Tax Act, 1956 ("CST Act") as is evident from the order dated 19 March 2019.

2 The Petitioner purchases high speed diesel from outside the State of Maharashtra for use in machinery, which in turn is used for mining. The Petitioner was entitled in terms of the clarification in Trade Circular No.47T of 2017 dated 17 November 2017 to the grant of C-Form as high speed diesel was specified "goods" under the amended Section 2(d) of the CST Act. Further, in terms of the circular, if high speed diesel is used in mining activity, then C-Form would be issued on inter-state purchase by the Respondents. The aforesaid circular No.47T of 2017 was withdrawn on 14 February 2019 by Trade Circular No.7T of 2019. In view of the above

withdrawal of Circular No.47T of 2017, Respondent No.3 – Deputy Commissioner of State Tax rejected the Petitioner's application for C-Form for the period from 1 October 2018 to 31 December 2018. This by holding that as the earlier Trade Circular 47T of 2017 has been withdrawn by Circular No.7T of 2019. Thus holding that Respondent cannot issue C-Form in view of Section 10(10) of the Maharashtra Value Added Tax Act, 2002, which makes the Trade Circulars binding upon it.

3 The grievance of the Petitioner is that there is no authority with Respondent No.3 or any officer of the State Tax under the CST Act to reject the application for C-Form filed by a dealer. It is submitted that once a party is registered under the CST Act as a dealer, then the dealer is permitted to purchase the goods as defined under Section 2(d) of the CST Act from other states, then the issue of C-Form is obligatory upon the Respondents. In case, it is later found that the Petitioner had obtained C-Form in respect of goods which was not used for intended purpose, then it is always open to the Respondents to invoke the provisions of the CST Act and the Rules framed thereunder by imposing penalty upon the Petitioner.

4 In support, our attention was drawn to the decision of this court at the interim stage in **VVF (India) Ltd. vs. State of Maharashtra** in Writ Petition No.932/2018 dated 31 October 2018 and decision of the Kerala High Court in **Colourgraphs vs. Sales Tax Officer, III Circle, Ernakulam**[1]**.** In **VVF (India) Ltd.** (supra), a *prima facie* view was taken by placing reliance upon the decision of Kerala High Court in **Colourgraphs** (supra) to take a view canvassed by the petitioner as hereinabove.

1 **88 SCC 347**

Therefore, it is submitted that the order of Respondent No.3 be set aside and the Respondents be directed to issue C-Form and necessary inquiries, if any, about the intended user could be done subsequent to the issuance of C-Form.

5 On the other hand, Mr.Sonpal, learned Special Counsel, appearing for the State, very fairly states that the impugned communication dated 19 March 2019 of Respondent No.3 cannot be sustained as it is a non-speaking communication. Besides, he fairly concedes that the withdrawal of an earlier circular granting benefit to the Petitioner would only result in the officer applying his mind independently to the provisions of the CST Act and the withdrawal of a beneficial circular would not *ipso facto* mean that the benefit is not otherwise available under the Act. Our attention is invited to the affidavit in reply filed by Respondent No.3 wherein it has been pointed out that according to the Revenue, the Petitioner is not engaged in the business of mining of minerals. It is engaged in the removal of overburden in mining operations and would not satisfy the definition of “Mining” as provided in Mines and Minerals (Development & Regulation) Act, 1957. Thus it is submitted that when at the threshold the Revenue is satisfied that the Petitioner is not in the business of mining, it is not obligatory to issue the C-Form and thereafter take penal proceedings.

6 We have considered the rival submissions. In the peculiar facts of the present case, if the mere declaration by a Petitioner that he is carrying out mining activities is *prima facie* not found to be acceptable, then it is not necessary for the Sales Tax Authorities to first issue C-Form

and then start an inquiry. In such circumstances, it would inquire into the correctness of the Petitioner's claim, however, the same should be done expeditiously as delay in issuing C-Form lead to increase in costs for the Petitioner. It is, in these circumstances, that it would be appropriate that Respondent No.3 would hear the Petitioner before taking view on the eligibility of the Petitioner for the C-Form as claimed by them.

7 Mr.Sonpal, learned Special Counsel, on instructions of Mrs.Kavita Mohad, Deputy Commissioner of State Tax, states that Respondent No.3 would hear the Petitioner on 14 August 2019 at 11.00 a.m. in its office. The Petitioner should present themselves there and make their submissions in support of their claim for the issuance of C-Form. Mr.Sonpal, on instructions, further states that the decision of Respondent No.3 on the issue of entitlement of the Petitioner to C-Form would be communicated to the Petitioner on or before 30 August 2019.

8 In the above view, the petition is disposed of in the above terms. Needless to state that the view taken by the officer (Joint Commissioner of State Tax) in the affidavit in reply is only *prima facie* view. Respondent No.3 would independently decide the Petitioner's claim for C-Form without being influenced by the affidavit filed by Superior officer on the merits of the case.

9 It is made clear that the stand of the Revenue in its affidavit is a *prima facie* view, as is reflected in the affidavit filed by the Joint Commissioner of Sales Tax. The Petitioner would be meeting the objections of the Respondent on the *prima facie* view of the Revenue as stated by Joint

Commissioner in the affidavit. The Deputy Commissioner – Respondent No.3 after hearing the Petitioner would independently consider the submissions of the Petitioner in the context of the Revenue's objections as found in the affidavit. Needless to state that in case the Deputy Commissioner of State Tax proposes to reject the application of C-Form on any other ground, it would inform the Petitioner of the same and hear the Petitioner on it.

10 The petition is disposed of in above terms.

(S.C. GUPTE, J.) **(M.S. SANKLECHA, J.)**