BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 10.07.2019
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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)Nos.3936 to 3938 of 2014
and
W.M.P.(MD)Nos.1, 1 and 1 of 2014

M/s.Techny Chemy
Rep.by its Proprietor-
R.Sasikala,
No.24, Patel Street,
Ayyappa Nagar,
Trichy-620 021. ... Petitioner in all petitions

Vs.

The Assistant Commissioner (CT),
Srirangam Assessment Circle,
Kajamalai,
Trichy-620 020. ... Respondent in all petitions

COMMON RAYER: Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of writ of Mandamus, to direct the respondent herein to accept the Duplicate portion of the 'C' declaration forms in lieu of the Original 'C' Declaration forms declared missing by applying the law laid down in *Manganese Ore (India) Ltd V Commissioner of Sales Tax (1991) in 83 STC 116 (MP) and M.L.Pujara Vs. State of Tamil Nadu (1998) 108 STC 527 (Mad)* as per the representation of the petitioner dated 17.01.2014.

For Petitioner : Ms.R.Hemalatha

For Respondent : Mrs.J.Padmavathy Devi
Special Government Pleader
(in all petitions)

COMMON ORDER

The challenge in these writ petitions is to the assessments framed under the provisions of the Central Sales Tax, 1956 (in short 'Act') in respect of the periods 2008-09, 2009-10 and 2010-11. The assessing authority had issued notice to the petitioner / dealer calling upon the petitioner to file 'C' declaration form. There appears to have been no response to the aforesaid notice and hence, the assessments were completed bringing the turnover to tax at the higher rate provided under Statute.

2. Ms.Hemalatha, learned counsel appearing for the petitioner would submit that in all the three cases 'C' forms have been misplaced. A certificate has also been obtained from the concerned police station to the effect that despite sincere efforts taken to trace the original 'C' forms, the same could not be located.

3. The petitioner thereafter approached the Assessing Officer by way of a petition, dated 17.01.2014 (for all three years) for accepting the duplicate portion of the form in lieu of the original 'C' form declaration. These petitions have not been disposed of and are yet pending.

4. No counter has been filed in these matters, despite the writ petitions pending on the docket of this court since 2014. However, Mrs.J.Padmavathy Devi, learned Special Government Pleader, proceeds on the basis of the instructions obtained from the Assessing Authority.

5. The sole question that arises is whether the petitioner would be entitled to the benefit of Section 8(1) of the Act in the absence of original 'C' declaration form. This issue has been considered and decided by a Division Bench of the Madhya Pradesh High Court in the case of *Manganese Ore (India) Ltd. Vs. Commissioner of Sales Tax, Madhya Pradesh* [83 STC 116 (MP)].

6. The Bench adopted a view that since the Declaration forms comprise of three parts i.e., original, duplicate and counter foil, and all three parts are identical, it would suffice that any one of the three parts be filed in order to obtain the benefit of concessional rate of tax. This position has also been referred to by a Full Bench of the Supreme Court in a subsequent judgment in the case of *India Agencies (Regd.), Bangalore vs. Additional Commissioner of Commercial Taxes, Bangalore* [Appeal (Civil) No.1922 of 1999, dated 18.12.2004].

7. The Bench in that case, considered an issue similar to the one before me, albeit, in the context of the Karnataka Regulations. The decision of the Division Bench of the Madya Pradesh High Court was distinguished on account of a difference in the language of the respective Regulations. In the present case we are concerned with the Central Sales Tax (Tamil Nadu) Rules 1957 (in short 'Rules'). Rule 10(2) states as follows:-

> *(2) A registered dealer who claims to have made a sale to another registered dealer shall in respect of such claim, attach to his return in Form 1 the portion marked 'Original' of the declaration received by him from the purchasing dealer; or duplicate of such declaration / Certificate where the original has been lost. The*

assessing authority may in his discretion also direct the selling dealer to produce for inspection the portion of the declaration / Certificate marked 'Duplicate'. Notwithstanding anything contained in the foregoing paragraph and in Rule 5, the selling dealer may, instead of attaching the said declaration/certificate received from the purchasing dealer to the return in Form 1, submit such declaration/certificate relating to every month/quarter of a year, within three months, after the end of the period to which the declaration/certificate relates. Omitted [Form of declaration / Certificate to the return in Form 1 keep it in his custody subject to the condition that he submits all the forms of declaration / Certificate relating to the year at any time before the final assessment of the accounts of that year.] omitted.

8. The applicable State Rules require the dealer to attach to his return the 'C' form and permit him to produce the duplicate of such declaration / certificate, where the original has been lost. In the light of the unambiguous language of Rule 10(2) the assessee is entitled to succeed.

9. In the present case, the assessee has not appeared before the Assessing Authority at the time of assessment. He has however, under cover of representation dated 17.01.2014 (wrongly typed as 17.01.2013 in the representation) approached the Assessing Officer requesting acceptance of the duplicate portion of the 'C' declaration form and also to request that the representation be treated as an application in terms of Section 84 of the Act r/w 9(2) of the Central Sales Tax Act. This application is pending.

10. The respondent is directed to dispose the rectification application dated 17.01.2014 in the light of the discussion above within a period of four weeks from today (i.e., 10.07.2019).

11. These writ petitions are disposed of in the aforesaid terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

The Assistant Commissioner,
Srirangam Assessment Circle,
Kajamalai, Trichy-620 020.

+1cc to Mr.R.HEMALATHA,Advocate, SR.No.74667

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