IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CWP No.23513 of 2017(O&M)

Date of Decision:-20.11.2019

Saroj Tradecom Pvt. Ltd., Ranchi.

......Petitioner.

Versus

The Commissioner of Value Added Tax, Department of Excise & Taxation, Haryana & Anr.

......Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE LALIT BATRA

Present:- Mr. Sumeet Gadodia, Advocate
Mr. Kaushik Poddar, Advocate &
Mr. Gurmandeep Sullar, Advocate for the Petitioner.

Ms. Mamta Singla Talwar, Deputy Advocate General, Haryana for respondent no.1-State.

Respondent No.2 stands deleted from the array of the Parties vide order dated 23.05.2018.

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JASWANT SINGH, J.

1. The Petitioner-Private Limited Company through instant Petition under Article 226 is seeking restoration of Form 'C' No. HR06WC0371830 issued by official Respondents to private Respondents i.e. M/s Alka Enterprises, Palwal, Haryana.

2. The facts emerging from record are that the Petitioner sold some goods during 07.04.2015 to 30.06.2015 to Respondent No. 2-Alka

Enterprises. The Respondent No. 2-Alka Enterprises in terms of different provisions of Central Sales Tax, 1956 (for short 'CST Act') online applied for Form 'C' which was issued by official Respondent on 09.10.2015. Alka Enterprises online on 16.10.2015 applied for cancellation of their registration certificate w.e.f. 01.10.2015 on account of discontinuation of business. The Competent Authority vide order dated 02.09.2016 cancelled registration certificate of Alka Enterprises w.e.f. 01.10.2015 as well Form 'C' which was issued on 09.10.2015. Alka Enterprises purchased goods against said Form 'C' at concessional rate of Central Sales Tax leviable under CST Act. The Petitioner is assailing said cancellation of Form 'C' on the ground that registration certificate of Alka Enterprises at the time of issue of Form 'C' was valid and goods in question were sold much prior to effective date of cancellation of registration certificate as well Form 'C'.

3. Counsel for the Petitioner contended that they had sold goods prior to date of cancellation of registration certificate as well cancellation of Form 'C'. The Respondent cancelled registration certificate w.e.f. 01.10.2015 on the basis of application dated 16.10.2015 whereas goods were sold during April' 2015 to June' 2015 and Form 'C' was issued on 09.10.2015. Alka Enterprises even though applied for cancellation w.e.f. 01.10.2015 however, cancellation order was passed on 02.09.2016 and Form C was issued on 09.10.2015. The Respondent has no power to retrospectively cancel Form C. The Respondent has power to impose penalty on purchasing dealer but it has no power to cancel Form C. In support of his contention, counsel cited judgment of Delhi High Court in the case of **Jain Manufacturing (India) Pvt. Ltd. Vs Commissioner Value Added Tax & Another (2016) 93 VST 326**.

4. Ld. State Counsel contended that Alka Enterprises applied for cancellation of their registration certificate w.e.f. 1.10.2015, thus there was no question to issue form C which was issued by mistake and at the time of cancellation of registration was legally cancelled.

5. Having scrutinized record of the case and heard arguments of both sides, we find that present case is squarely covered by judgment of Delhi High Court in the case of Jain Manufacturing (Supra). The relevant paragraphs of afore-cited judgment are reproduced as under:

> " **No power to cancel a C Form**
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> **16.** The central issue in the present case is whether there exists a power in the Commissioner VAT, Delhi under the CST Act and the Rules there-under to cancel a C-Form and further if such power exists then whether in the facts and circumstances of the present case such power was rightly exercised.
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> **17.** No provision in the CST Act has been brought to the notice of the Court which enables an authority issuing a C-Form to cancel the C-Form. Rule 5(4) of the Central Sales Tax (Delhi) Rules, 2005 enables the authority which has to issue a C-Form to "withhold" the C-Form. The contingencies under which a C Form may be withheld are set out in Rule 5(4). For instance, Rule 5 (4) (v) envisages that some adverse material has been found by the Commissioner "suggesting any concealment of sale or purchase or furnishing inaccurate particulars in the returns." The Commissioner could, in terms of the proviso to Rule 5(4), instead of withholding the C-Form, issue to the applicant such forms in such numbers and subject to such conditions and restrictions, as he may consider necessary. However, there is no specific provision even under the aforementioned Rules which enables the Commissioner to cancel the C-Form that has already been issued.
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> **18.** There is merit in the contention that one of the primary requirements for issuance of a C-Form is that the dealer to whom the C-Form is issued has to have a valid CST registration on the date that the C Form is issued. If the purchasing dealer does not possess a valid CST registration on the date of the transaction of sale, then the selling dealer cannot insist on being issued a C-Form. In the present case, on the date of the transaction i.e. 10th March, 2015 the purchasing dealer viz., Respondent No. 2 did posses a valid CST registration. The name of the purchasing dealer as shown in the invoices, and the name and address of the registered purchasing dealer as reflected in the C-Forms issued by the DT&T matched. The cancellation of the CST registration of

Respondent No. 2 took place subsequently on 4th August 2015. Therefore, there was no means for the Petitioner as the selling dealer to suspect as of the date of sale or soon thereafter that the payments made to it RTGS was not by Respondent No. 2 but by some other entity with the same name. It is not possible, therefore, to straightaway infer any collusion between the Petitioner and Respondent No. 2 or for that matter to other entity of the same name spoken of by the DT&T.

19. In any event, from the point of view of the Petitioner, the requirement of Section 8(1) of the CST stood fully satisfied. The purchasing dealer had a valid CST registration on the date of purchase of goods by the Respondent No. 2 from the Petitioner. The C-Form issued by the DT&T confirmed the registration of Respondent No. 2 under the CST Act.

20. *Suresh Trading Company* (supra), the facts were that between 1st January and 31st December 1967, the Respondents purchased goods from Sulekha Enterprises Corporation (SEC) who were registered dealers under the Bombay Sales Tax Act, 1959. On the date of such sale the registration of SEC was valid. The Respondents claimed deduction in the turnover of sales on that basis. This was disallowed by the Sales Tax Officer on the ground that the registration of SEC had been cancelled on 20th August 1967 with retrospective from 1st January 1967. Therefore, on the dates on which the Respondents had purchased the goods, SEC could not be said to be a registered dealer. The STO proceeded to impose penalty on the Respondents.

21. Whatever may be the effect of a retrospective cancellation upon the selling dealer, it can have no effect upon any person who has acted upon the strength of a registration certificate when the registration was current. The argument on behalf of the department that it was the duty of persons dealing with registered dealers to find out whether a state of facts exists which would justify the cancellation of registration must be rejected. To accept it would be to nullify the provisions of the statute which entitle persons dealing with registered dealers to act upon the strength of registration certificates.

26. 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. ”

6. The Counsel for Respondent could not distinguish facts of present case from afore-cited judgment and we find ourselves in full agreement with judgment of Delhi High Court and find no reason to take any contrary view. Thus, respectfully following judgments of Hon'ble Delhi High Court we **allow** present Petition and restore Form 'C' in question.

(JASWANT SINGH)
JUDGE

(LALIT BATRA)
JUDGE

November 20, 2019
Vinay

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*