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

\+ **W.P.(C) 13365/2018**

MAA JAGDAMBA TRADERS ..... Petitioner

Through: Mr.Ravi Chandhok and Mr.Vasudev Lalwani, Advocates.

versus

THE COMMISSIONER VALUE ADDED TAX ..... Respondent

Through: Mr.Satyakam, ASC for GNCTD.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **09.07.2019**

1. The prayer in this writ petition is for quashing a notification dated 11th July, 2018 issued by the Commissioner of Value Added Tax (CVAT) under Rule 5 (13) of the Central Sales Tax Act (Delhi) Rules, 2005 ('CST Delhi Rules') to the effect that a 'C' Form issued by M/s. Sarv Manglam Sales in favour of the present petitioner is declared obsolete and invalid for all purposes with effect from the date of issuance of such forms.

2. The said 'C' Form was issued in favour of the present petitioner on 22nd January 2016 and it was valid for the third quarter 2015-16. The petitioner is registered as a dealer under the Jammu and Kashmir Value Added Tax (JKVAT) and the Central Sale Tax, 1956 (CST Act) in the State of Jammu and Kashmir. The petitioner made an inter-State sale of goods to Sarv Manglam Sales (the purchasing dealer) registered in Delhi under the CST

Act. The sale was made against the 'C' Form prescribed under the Central Sales Tax (Registration and Turnover) Rules 1957. The sale was made during the first quarter of 2016-17 in the sum of Rs. 74,72,806/-. Since both the dealer and the purchasing dealer were registered under the CST Act, the rate of tax was 2%. The dealer in Delhi i.e. Sarv Manglam Sales issued the above 'C' Form in favour of the Petitioner which was then presented by the Petitioner before the authority of Jammu and Kashmir in support of the payment of 2% tax. The return disclosing the said transaction and payment of tax of the said percentage was accepted by the authority in Jammu and Kashmir.

3. The short question that arises is whether there was any justification for the CVAT in New Delhi to retrospectively declare the 'C' Form which had already been acted upon by the authority in Jammu and Kashmir as "obsolete". The attention of the Court is drawn to Rule 5(13) of the CST Delhi Rules reads as under:

> *5(13) The Commissioner may, by notification, declare that Declaration Forms of a particular series, design or colour shall be deemed as obsolete and invalid with effect from such date as may be specified in the notification.*

4. It is clear from the reading of the above Rule that the declaration of any Form being obsolete takes effect from such date as may be specified in a notification. The above sub-rule has to be read with Rule 5(14) which reads as under:

> *5(14)"When a notification, declaring Forms of a particular series, design or colour obsolete and invalid, is published under sub-rule (13), all registered dealers shall, on or before the date*

with effect from which the Forms are so declared obsolete and invalid, surrender to the Commissioner all unused Forms of that series, design or colour which may be in their possession and shall be issued in exchange for the Forms so surrendered, such new Forms as may be substituted for the Forms declared obsolete and invalid:

PROVIDED that new Forms shall not be issued to a dealer until he has accounted for the old Forms lying with him and returned the balance, if any, in his hand to the Commissioner.

5. A collective reading of both the sub rules makes it clear that once the form that has been issued is utilized, the question of subsequently declaring such used forms as obsolete would not arise. Rule 5(14) makes the requirement of surrender of the 'unused forms' of the series design or colour that have been rendered obsolete clear and provides that only for such unused forms would new forms be issued. It is, therefore, plain that the above rules do not permit the CVAT to declare forms that have already been issued and acted upon as obsolete.

6. In the counter affidavit filed on behalf of the Respondent, it is contended that the judgment of this Court in ***Jain Manufacturing (India) Private Limited v. Commissioner of Value Added Tax 2016 SCC Online Delhi 3656*** had held that the CVAT has no power to cancel 'C' Form already issued. Although the SLP against the said decision has been dismissed by the Supreme Court, it is pointed out that in the subsequent decision of this court in ***Jai Gopal International Impex Pvt. Limited v. Commissioner of VAT*** (decision dated 23rd July 2018 in W.P. (C) 7563 of 2018) the said decision in ***Jain Manufacturing*** was followed and SLP (C) 27177 of 2018

filed against the decision of this Court in ***Jai Gopal International*** is pending before the Supreme Court. In the said SLP a stay has been granted by the Supreme Court on 27th October, 2018 of the said judgment of this Court. It is accordingly submitted that the present petition should await the decision in the said SLP.

7. The Court finds that independent of the decisions in ***Jain Manufacturing*** *(supra)* and ***Jai Gopal International*** the present petition should succeed since here there is no legal basis for the Respondents to have declared by the impugned notification, the 'C' Forms already issued and acted upon as 'obsolete'. In fact, neither in ***Jain Manufacturing India Private Limited*** nor in ***Jai Gopal International*** did the Commissioner invoke its power under Rule 5 (13) of the CST Delhi Rules to declare the 'C' Form already issued as obsolete.

8. For the aforementioned reasons, the impugned notification dated 11th July 2018 issued by the CVAT is hereby set aside. The writ petition is allowed in the above terms.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 09, 2019
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