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

\+ W.P. (C) 8236/2020 & C.M.Nos.26695-26696/2020

MS ADS SPIRITS PRIVATE LIMITED AND ANR. ..... Petitioners

Through: Mr.Praveen Kumar with Mr.Rajiv Agnihotri, Ms.Babita Sant and Ms.Sunaina Kumar, Advocates.

versus

THE COMMISSIONER OF TRADE AND TAX DEPARTMENT & ANR. ...... Respondents

Through: Mr.Satyakam, ASC for GNCTD.

% Date of Decision: 20th October, 2020

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

MANMOHAN, J: (Oral)

1. The petition has been listed before this Bench by the Registry in view of the urgency expressed therein. The same has been heard by way of video conferencing.

2. Present writ petition has been filed challenging order dated 1st July, 2020 whereby respondent no.2 has rejected petitioner's application for rectification of Form F for Assessment Year 2017-18. Petitioners further seek a direction to the respondents to issue Form 'F' for period May 2017 to March 2018. It is also prayed that respondents be prohibited from taking any coercive actions against the petitioner pursuant to directions dated 1st July, 2020.

3. Learned counsel for the petitioners states that while filing its returns for the period April, 2017 to March, 2018, the petitioner had inadvertently mentioned the entire stock to be from Haryana whereas the stock had been procured from both Punjab and Haryana. He points out that on account of the said mistake, the Form F generated for the said period is the aggregate of the supplies of Punjab as well as Haryana whereas it should have been separate for both the States.

4. He further states that having discovered the aforesaid mistake, the petitioner requested for correction/modification in Form 'F' for the Financial Year 2017-18 vide letter dated 19.02.2020 to the Assistant Commissioner, Department of Trade and Taxes (Respondent No.2 herein).

5. He states that the petitioners challenged the impugned order dated 1st July, 2020 whereby the respondent had rejected the petitioner's rectification request before the Supreme Court by way of WP(C) No.874 of 2020. However, he points out that the said petition was dismissed vide order dated 7th September, 2020 while granting the petitioners the liberty to take appropriate remedy against the impugned order.

6. Learned counsel for the petitioners submits that there is no provision either in the Central Sales Tax Act, 1956 or Central Sales Tax (Delhi) Rules, 2005 under which the assessing Authority can refuse to issue Forms 'F' and consequently, the order of the Assessing Authority in refusing to issue Form 'F' to the petitioner who is otherwise entitled to the same is without authority of law and is arbitrary and liable to be quashed. He relies upon the order of this Court in ***M/s. Ingram Micro India Pvt. Ltd. v. Commissioner DT&T & Anr., W.P. (C) No. 8272/2015***.

7. On the other hand, Mr. Satyakam, learned Additional Standing counsel for the respondents submits that the decision of this Court in ***M/s. Ingram*** Micro ***India Pvt. Ltd*** (supra) is under challenge before the Supreme Court in Civil Appeal No. 4573/2017 and the Supreme Court has granted leave in the said matter vide order dated 27th March, 2017. He also points out that this Court rendered decisions in several similar cases, including ***W.P. (C) No. 2633/2017, M/s. Indian Oil Corporation Ltd. v. Commissioner, VAT*** decided on ***11th April, 2017***, which have been appealed against in the Supreme Court and the Supreme Court has stayed the operation of the judgment of this Court.

8. Mr. Satyakam points out that in the light of the interim orders passed by the Supreme Court, while deciding another writ petition i.e. ***Ingram Micro*** India ***Ltd. v. Commissioner, Department of Trade and Taxes and Anr., W.P. (C) No. 8435/2018***, decided on 04th December, 2018, this Court issued directions for issuance of segregated and separate 'C' Forms. However, the directions issued by this Court were suspended till the Civil Appeals before the Supreme Court were pending.

9. Same is the position in the decision of this Court in ***Allied*** Automation ***Engineering Services Pvt. Ltd. v. Commissioner of Trade and Taxes, W.P. (C) No. 9474/2018*** decided on 10th September, 2018, in ***M/s. Samsung C&T Pvt. Ltd. v. The Commissioner, Trade & Taxes, & Anr., W.P. (C) No. 4092/2017*** decided on 15th February, 2019, in ***E.I. Dupont India Private Limited v. Commissioner, VAT, Delhi & Anr, C.M. No. 47356/2018 in W.P. (C) No. 4952/2017*** decided on 27th February, 2019, in ***C G Power And Industrial Solutions Limited vs Department of Trade and Taxes & Ors., W.P. (C) No. 3024/2019*** decided on 15th January, 2020, in

Shri Uday Jain Prop. M/s Dhoomimal Gallery Vs. Commissioner, Trade and Taxes & Ors., W.P.(C) No. 4411/2020 decided on 23rd July, 2020 and in ***GSP Power System Pvt. Ltd. Vs. Commissioner of Goods and Services Tax Department of Trade and Taxes and Anr., W.P.(C) 7411/2020,*** decided on 05th October, 2020.

10. Mr. Satyakam contends that this Court has recently in similar matters been either adjourning matters or is allowing the petition but suspending the relief till the civil appeals pending in the Supreme Court are decided.

11. Having heard the counsel for the parties, this Court is of the view that no useful purpose would be served by keeping the petition pending. Consequently, this Court directs the respondent no.2 to allow the amendment sought for by the petitioner in its return of Assessment Year 2017-18. However, this direction shall remain suspended till the Civil Appeals pending before the Supreme Court, taken note of hereinabove, are decided and this direction shall abide by the decision that the Supreme Court renders.

12. With the aforesaid direction, present writ petition and pending applications stand disposed of.

13. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

SANJEEV NARULA, J

OCTOBER 20, 2020
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