IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.14482 of 2021
and
W.M.P.No.15366 of 2021
(Through Video Conferencing)

Tvl.Spilcare O Metaclen Pvt.Ltd,
Represented by its Director,
Mrs.Tripta Khanna, No.766/1, Shakthi Towers,
Anna Salai, Thousand Lights,
Chennai – 600 002. ...Petitioner

Vs

The Deputy Sales Tax Officer – I,
Amaindakarai Assessment Circle,
Chennai – 600 102. ...Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records pertaining to Order No.CST/648909/2009-10 dated 09.04.2019 issued by the respondent and quash the same.

For Petitioner : Mr.G.Derrick Sam

For Respondent : Mr.Richardson Wilson
Additional Government Pleader

ORDER

The petitioner has challenged the impugned order dated 19.04.2021 passed by the respondent under Section 84 of the TNVAT Act, 2006. It is the case of the petitioner that the respondent had earlier passed an Assessment Order dated 09.04.2019 and had confirmed tax on inter-state sales transactions by denying the petitioner to the benefit of concession under Section 3 of the Central Sales Tax Act, 1956.

2.It is the specific case of the petitioner that some of the C Forms were lost and therefore the petitioner had filed the xerox/photo copies of the same to substantiate the same and therefore the respondent ought to have revised the Assessment in terms of the applications filed under Section 84 of the TNVAT Act, 2006 by the petitioner on 06.11.2019

3.It was further submitted that this transaction pertains to transit and inter-state sale and purchase. They also get reflected in the web portal and it was open for the respondents to verify the same from the web portal and come to an independent conclusion as to whether the transaction attracted tax at 12.5% or at the concessional rate of tax under CST Act, 1956.

4.It is further submitted that even otherwise the respondent had wrongly levied tax at the rate of 12.5% instead of 4% as the product made by the petitioner fell under tarrif heading 2001 of Sl.No.1 of Part B to 1st Schedule to the TNVAT Act, 2006 as made applicable for the Assessment under Central Sales Tax Act. It is therefore submitted that the impugned order rejecting the request of the petitioner by only stating that the petitioner has not produced C Forms cannot be sustained and therefore, the impugned order is a non-speaking order which is liable to be quashed.

5.Opposing the prayer, the learned Additional Government Pleader for the respondents submits that when the law mandates a particular things that it has to be done in a manner. He has relied upon the decision of the Hon'ble Supreme Court in India Agencies (REGD), Bangalore Vs. Additional Commissioner of Commercial Taxes, Bangalore (2005) 2 SCC 129 wherein a specific reference was made to Rule 12(2) of the Central Sales Tax (Registration and Turnover) Rules, 1957 and it was held as under:

> ''12. We have carefully considered the elaborate submissions made by the learned senior counsel. It is contended on behalf of the appellant that in respect of the inter- state sales transactions, the appellant had collected 279 original C-Forms and duplicates and that the appellant had separated original C-Forms for submitting the same to the Assessing Officer and kept the duplicate separately. The entire file containing the original had thereafter been misplaced and, therefore, the appellant could file only the duplicate. It is submitted that under Rule 12(2) of the Central Sales Tax (Registration and Turnover) Rules, 1957 in case of loss of original C-forms, if he complies with the above rule, the appellant will be eligible for the concessional rate of sales-tax. It is stated that when the appellant had complied with the said rule, there is no reason for denial of

the concessional rate. The impugned order passed by the respondent was, therefore, erroneous and it is set aside restoring the order of the Assessing Authority. In our opinion, the said contention is not tenable and has no force. We have already extracted Rule 6(b)(ii) of the Central Sales Tax (Karnataka) Rules, 1957 and Rule 12(2) and 12(3) of the Central Sales Tax (Registration and Turnover) Rules, 1957. In our view, the Rule has to be strictly construed. Admittedly, the appellant has not complied with the said provisions and, therefore, he is not entitled to the concessional rate of tax under Section 8 of the Central Sales Tax. Section 8(4) specifically provides that the provisions of sub-section (1) shall not apply to any sale in the course of inter-state trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner. Rule 8(4)(a) also provides that a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority. On the above provision, a registered dealer will not be entitled to the concessional rate of tax in respect of inter-state sales made by him without the production of the declaration referred under clause (a) of sub-section (4) noted above.

13. Under the Central Sales Tax (Karnataka) Rules, 1957, the dealer is required to submit along with his return the original of the prescribed forms. As could be seen from the rule extracted above a registered dealer who claims that he has made a sale to another registered dealer is required to attach the original of the declaration forms on the certificate in the prescribed form received by him from the prescribed dealer along with his return filed by him. We have already extracted Section 13 of the Central Sales Tax Act, which deals with the power of the Central Government to make rules, the form and the manner for furnishing declaration under sub-section (8) of Section 8. Sub- clause (3) of Section 13 provides that the State Government may make rules not inconsistent with the provisions of the Central Sales Tax Act, 1956 and the rules made under sub-section (1) to carry out the

purposes of the Act. In exercise of the powers conferred by sub-section 3,4, and 5 of Section 13 of the Central Sales Tax, 1956, the Government of Karnataka made the Central Sales Tax (Karnataka) Rules, 1957. Under rule 6(b) (ii) of the Karnataka Rules, the State Government has prescribed as to the procedures to be followed and the documents to be produced for claiming concessional rate of tax under Section 8(4) of the Central Sales Tax Act. Thus, the dealer has to strictly follow the procedure and the Rule 6 (b)(ii) and produce the relevant materials required under the said rule. Without producing the specified documents as prescribed thereunder a dealer cannot claim the benefits provided under Section 8 of the Act. Therefore, we are of the opinion that the requirements contained in Rule 6 (b)(ii) of the Central Sales Tax (Karnataka) Rules, 1957 are mandatory. Section 12(1)(2) and (3) of the Central Sales Tax (R&T) Rules, 1957 provides that the registered dealer is required to file the declaration and the certificate referred to in Section 8(4) in Form-C and D respectively. Form-C is a declaration divided into three parts. All the three parts are identical, the first part of the form being the counter foil and the second part being the duplicate and the third part being the original. The counter foil is to be retained by the purchasing dealer. The original is to be filed before the Assessing Officer by the selling dealer to claim the concessional rate. The duplicate is to be retained by the selling dealer. If the C-Form or the original part of it is lost whilst in the custody of the purchasing dealer or in transit, the purchasing dealer shall have to furnish an indemnity bond for the same as fixed by the concerned authority. If the original part of C-Form is lost by the selling dealer whilst it is in his custody or in transit, the selling dealer shall furnish an indemnity bond as fixed by the concerned authority and follow the procedure prescribed under Rule 12(3).

15. The very purpose of prescribing the filing of C-Forms is that there should not be suppression of any inter-state sales by a selling dealer and evasion of tax to the State from where the actual sales are affected. Secondly, the purchasing dealer also cannot suppress such

purchases once he issues C-Form to the selling dealer. Since the dealer should issue C-Form has to maintain a detailed account of such C-Forms obtained from the department prescribed under the States Taxation law. The C-Form is a declaration to be issued only by the sales tax authorities of concerned States. By issuing declaration in C-Form the purchasing dealer would be benefited as he is entitled to purchase goods by paying only concessional rate of tax of 4% as prescribed by the concerned State of purchasing dealer otherwise the purchasing dealer has to pay tax at a higher rate besides additional taxes on such sales effected within the State where selling dealer is situated.

25. The learned senior counsel for the appellant submitted that there is no suggestion anywhere that there is anything wrong with the genuineness of the transaction or any doubts as to the possession by the purchasing dealer on a certificate enabling the sellers to obtain the concessional rate of tax under Section 8 of the Act. Under such circumstances, the authorities should not have taken the strict view in rejecting the claim of the concessional rate of tax. At first sight, the argument of the learned counsel for the appellant appears to be genuine and acceptable but considering the mandatory nature of the provisions of the Act and Rules, this Court is called upon to decide the questions involved in this case. The provisions being mandatory they should have been complied with. The appellant made no attempt to comply with Rule 12(3) till after his claim was rejected by the Assessing Authority. Having made no attempt to comply with the mandatory provisions, he disentitled himself from getting the concessional rate. Even otherwise, in our view, it is a pure question of law as to the proper interpretation of the provisions of Section 8 of the Central Sales Tax Act and the provisions of Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 and Rule 6(b)(ii) of the Central Sales Tax (Karnataka) Rules, 1957. In view of the decision of this Court in the case of Kedarnath Jute Manufacturing Co. (supra) and of the decision in Delhi Automobiles (P) Ltd. (supra), it is clear that these provisions have to be strictly construed and that unless there is

strict compliance with the provisions of the statute, the assessee was not entitled to the concessional rate of tax.

6.Asfaras the other issue regarding the rate of tax is concerned, it is submitted that the petitioner has to workout the remedy in accordance with law by filing an Appeal under Section 51 of the TNVAT Act as the issue relating to classification at the rate of tax cannot be determined in this summary proceedings under Article 226 of the Constitution of India.

7.Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents and perused the impugned order and the provisions of the CST Act, 1956, Central Sales Tax Act (Registration and Turn over) Rules, 1957. I have also perused the impugned order and the earlier Assessment order dated 09.04.2019 and the application filed by the petitioner under Section 84 of the TNVAT Act, 2006.

8.Asfaras the production of C Forms is concerned, Rule 12 of the aforesaid rules makes it very clear that it is for the petitioner to approach the selling dealer and obtain appropriate Forms from the Sales Tax Department from the other states. Rule 12 of the aforesaid Rules which reads as under:-

> "12(1) the declaration and the certificate referred to in sub-section 4 of section 8 shall be in Forms C and D respectively:
>
> Provided that Form C in force before the commencement of the Central Sales Tax (Registration and Turnover) (Amendment) Rules 1974, or before the commencement of the Central Sales Tax (Registration and Turnover) (Amendment) Rules 1976, may also be used upto the 31st December 1979 with suitable modifications;
>
> Provided further that a single declaration may cover all transactions of sale, which take place in one financial year between the same two dealers.
>
> Provided also......
>
> (2) Where a blank or duly completed form of declaration is lost, whether such loss occurs while it is in the custody of the purchasing dealer or in transit to the selling dealer, the purchasing dealer shall furnish in respect of every such form so lost an indemnity bond in Form G to the notified authority from

whom the said form was obtained, for such sum as the said authority may having regard to the circumstances of the case, fix. Such indemnity bond shall be furnished by the selling dealer to the notified authority of his State if a duly completed form of declaration received by him is lost, whether such loss occurs while it is in his custody or while it is in transit to the notified authority of his State.

Provided that where more than one form of declaration is lost, the purchasing dealer or the selling dealer, as the case may be, may furnish one such indemnity bond to cover all the forms of declaration so lost.

(3) Where a declaration form furnished by the dealer purchasing the goods or the certificate furnished by the Government has been lost, the dealer selling the goods, may demand from the dealer who purchased the goods or, as the case may be, from the Government, which purchased the goods, a duplicate of such form or certificate, and the same shall be furnished with the following declaration recorded in red ink and signed by the dealer or authorized officer or the Government, as the case may be, on all the three portions of such form or certificate-

"I hereby declare that this is the duplicate of the declaration form/certificate No ... signed on ... and issued to ..... who is registered dealer of ..... (State) and whose registration certificate number is ...."}.''

9.The Hon'ble Supreme Court has considered the issue and has answered the issue against the petitioner. It is not open for the petitioner to shift the burden on the Assessing Officer to verify from the data from the website of the Sales Tax Department from the supplier's end. To that extent, I find there is no merits in the present writ petition. The petitioner is bound to obtain certificates in a manner prescribed under the aforesaid Rules.

10.Asfaras rate of tax whether the goods are liable to tax at 12.5% or 4% in terms of the Sl.No.1, Part B of the 1st Schedule of the TNVAT Act, 2006 would require a re-consideration by the respondent as there is no discussion on the same in the impugned order. To that extent, I am inclined to set aside the impugned order and remit the case back to the respondents to pass appropriate orders on merits and in accordance with law by considering the representation of the petitioner.

11.Under these circumstances, the impugned order is set aside and the case is remitted back to the respondents to pass order within a period of 60 days from the date of receipt of a copy of this order. Before passing such order, the respondent shall also heard the extent the benefit of personal hearing. Liberty is also given to the petitioner to approach the respondent as and when the petitioner is able to secure/procure duplicate copies of C Form from the supplier in terms of the Rule 12 of the aforesaid Rules.

12.Accordingly, this writ petition stands partly allowed in terms of the above observations. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Deputy Sales Tax Officer – I,
Amaindakarai Assessment Circle,
Chennai – 600 102.

+1cc to the Government Pleader, S.R.No.65929

W.P.No.14482 of 2021
and
W.M.P.No.15366 of 2021

SR(CO)
RGA(21/01/2022)