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

% *Date of Decision: 13.12.2022*

+ W.P.(C) 10546/2021 & CM No.32524/2021

MANGALAM TRADERS

..... Petitioner

Through: Mr. Yuvraz Singh, Mr. Rakesh
Aggarwal & Mr. Chetan
Kumar Shukla, Advs.

versus

VALUE ADDED TAX OFFICER AND ORS. Respondents

Through: Mr. Anuj Aggarwal, Ms. Ayushi
Bansal, Mr. Sanyam Suri & Ms.
Arshya Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

VIBHU BAKHRU, J. (ORAL)

1. The petitioner has filed the present writ petition, *inter alia*, impugning the assessment orders dated 29.08.2020 (hereafter '**impugned assessment orders**') passed by the learned Assistant Value Added Tax Officer (hereafter '**the AVATO**') of the Department of Trade and Taxes, Government of NCT Delhi under Section 32 of the Delhi Value Added Tax Act, 2004 (hereafter '**DVAT Act**') for the fourth quarter of the Assessment Year 2016-2017 and the first quarter of the Assessment Year 2017-2018, as being violative of Article 14, 19 and 265 of the Constitution of India.

Factual Context

2. M/s Mangalam Traders is the proprietorship concerns of Mr. Raj Kumar (hereafter '**the petitioner**'). He is engaged in the business of inter-State trading of cosmetics, toiletries, disinfectant, deodorants, drugs, medicines, fruit jams, insect repellents, mosquito coils, ready mix food items and washing soaps under the name and style of Mangalam Traders. The petitioner is a registered dealer under the DVAT Act and the Central Sales Tax Act, 1956 (hereafter '**the CST Act**') vide TIN No. 07207142661.

3. The petitioner states that he filed quarterly returns for the fourth quarter of the Assessment Year 2016-2017 and the first quarter of the Assessment Year 2017-2018 on 01.06.2017 and 29.07.2017, respectively, *inter alia* claiming concessional rate of tax in respect of inter-State sales on the strength of C Form. The petitioner reported inter-State sales of ₹5,29,68,790/- and ₹2,39,20,824/- for the aforesaid two quarters and claimed a refund of ₹53,93,100 and ₹ 24,47,850, respectively, against C forms.

4. The petitioner's claim for refund was not processed and being aggrieved by the same, the petitioner filed writ petitions before this Court [being **C.W.P. 9574 of 2017** and **C.W.P. 9576 of 2017**], *inter alia*, praying that directions be issued for refund of the amount claimed for the fourth quarter of the Assessment Year 2016-2017 and the first quarter of the Assessment Year 2017-2018. These petitions were disposed of by this Court by a common order dated 30.10.2017,

which reads as under:

“Learned counsel for the respondents submits that the Petitioner has to file 'C' forms in physical form with the Authorities and thereafter the claim for refund can be processed by the Authorities.

It will be open to the petitioner to file the physical 'C' forms with the Authorities within a period of 15 days from today and the respondent authority will thereafter process the refund claim of the petitioner within the statutory period. In case there is a delay in the process of refund claim of the petitioner beyond the statutory period, it would be open to the petitioner to file an application in these writ petitions and ask for revival

With the aforesaid observations, the writ petition is disposed of.”

5. The petitioner furnished the physical forms, and the respondents passed a refund order dated 11.12.2017 for the first quarter of the Assessment Year 2017-2018, wherein the refund amount of ₹20,86,966 was allowed after adjusting ₹3,60,884/- against the claim of refund of ₹24,47,850.

6. The petitioner claims that although the said refund order has been passed but the same has not been credited in his account. Insofar as the refund of ₹53,93,100/- for the fourth quarter of the assessment year 2016-17 is concerned, the respondent's claim for refund was not processed.

7. The Value Added Tax Officer (hereafter '**the VATO**') issued a notice of default assessment dated 11.04.2018 for the period in

question (fourth quarter of the assessment year 2016-17 and the first quarter for the assessment year 2017-18). The VATO held that C Forms, furnished by the petitioner, related to another product and some of the C Forms could not be verified. He also noted that communication was received from his counterparts located where the purchasing dealers were registered, reporting that the some of the C Forms were issued in respect of other commodities and not cosmetics, shampoos, hair oils and other such items.

8. In view of the above, the VATO held that inter-State sales made by the petitioner may be treated as central sales without valid C Forms. Accordingly, VATO raised a demand of additional tax along with interest.

9. The petitioner sought review of the said orders, inter alia, on the ground that the petitioner could not be held responsible for any mismatch in the C Forms issued by the purchasing dealers. The petitioner relied on the decision of the Supreme Court in *State of Madras v. M/s Radio and Electrical Ltd & Anr.: AIR 1967 SC 234*. However, the said application was also rejected.

10. The petitioner appealed the assessment order dated 11.04.2018 before the Objection Hearing Authority (hereafter '**the OHA**') but the same was disposed of by an order dated 18.07.2019. The OHA remanded the matter to the assessing authority with the direction that the assessing authority shall pass a well-reasoned and speaking order after affording the petitioner an opportunity to be heard.

11. Thereafter, the concerned VATO issued notices under Section 59(2) of the DVAT Act and passed the impugned assessment orders dated 29.08.2020. A plain reading of the impugned orders indicates that they are substantially in similar terms as the order dated 11.04.2018.

12. A perusal of the impugned assessment orders indicates that the benefit of C Forms has been denied to the petitioner in respect of certain inter-State sales on the ground that the C Forms could not be verified. The concerned VATO had noted that whereas the petitioner deals with *kirana* items – ‘soap and detergents, cosmetics/shampoo/hair oils and tooth brush/paste/powder etc’ – the concerned authorities of Rajasthan have confirmed that the C Forms have been issued in respect of different items such as *gitti*, grit & cotton seed cake.

13. It is material to note that the VATO did not consider the judgements relied upon by the petitioner.

14. It is also material to note that there is no dispute that the purchasing dealers (dealers to whom the petitioner had sold goods such as shampoo, hair oils and soap etc.) were registered dealers in respect of those items. The learned counsel appearing for the petitioner had also illustratively referred to the registration certificate of one purchasing dealer, M/s Khatu Shyam Trading Company, which indicates that he is a registered dealer for re-sale of “*Khanda, Gitty, Boldar, Dust, Morum, G.S.B., Bricks & M Other Building Material*,

Bath Soap, Shampoo, Detergent Powder, Kirana Goods, and All HUL Product.”

15. Mr. Anuj Aggarwal, learned counsel appearing for the respondent, also did not dispute that the C Forms, produced by the petitioner, were issued by the registered dealer holding valid registration certificates in respect of the goods sold by the petitioner. There is also no allegation that any of the C Forms produced by the petitioner are forged or fabricated.

16. The principal question, to be addressed, is whether the petitioner could be denied the benefit of the C Forms on the ground that the same have not been verified, or on the basis of the mismatch of the products.

17. The said issue is covered by the decision of the Supreme Court in *State of Madras v. M/s Radio and Electrical Ltd & Anr.* (*supra*). The relevant extract of the said decision reads as under:-

“14. The Act seeks to impose tax on transactions, amongst others, of sale and purchase in inter-State trade and commerce. Though the tax under the Act is levied primarily from the seller, the burden is ultimately passed on the consumers of goods because it enters into the price paid by them. Parliament with a view to reduce the burden on the consumer arising out of multiple taxation has provided in respect of sales of declared goods which have special importance in inter-State trade or commerce, and other classes of goods which are purchased at an intermediate stage in the stream of trade or commerce, prescribed low rates

of taxation, when transactions take place in the course of inter-State trade or commerce Indisputably the seller can have in these transactions no control over the purchaser, He has to rely upon the representations made to him. He must satisfy himself that the purchaser is a registered dealer, and the goods purchased are specified in his certificate but his duty extends no further. If he is satisfied on these two matters, on a representation made to him in the manner prescribed by the Rules and the representation is recorded in the certificate in Form 'C' the selling dealer is under no further obligation to see to the application of the goods for the purpose for which it was represented that the goods were intended to be used. If the purchasing dealer misapplies the goods he incurs a penalty under Section 10. That penalty is incurred by the purchasing dealer and cannot be visited upon the selling dealer. The selling dealer is under the Act authorised to collect from the purchasing dealer the amount payable by him as tax on the transaction, and he can collect that amount only in the light of the declaration mentioned in the certificate in Form C. He cannot hold an enquiry whether the notified authority who issued the certificate of registration acted properly, or ascertain whether the purchaser, notwithstanding the declaration, was likely to use the goods for a purpose other than the purpose mentioned in the certificate in Form "C" There is nothing in the Act or the Rules that for infraction of the law committed by the purchasing dealer by misapplication of the goods after he purchased them, or for any fraudulent misrepresentation by him, penalty may be visited upon the selling dealer."

18. In *Pentex Sales Corporation v. Commissioner of Sales Tax*,

Delhi: ILR (2013) 3 Del 2296, this court had referred to the decision in the case of **State of Madras v. M/s Radio and Electrical Ltd & Anr.** (*supra*) and held that the dealer claiming the benefit of ST-I Form was required to verify that the purchasing dealer was a registered dealer and holds a registration certificate in respect of the said goods sold to him. Once the said dealer had complied with the same, his duty did not extend any further.

19. It is not expected that the registered dealer is to conduct the investigation as to how the purchasing dealer has obtained the C Form. If the purchasing dealer is a registered dealer in respect of the goods dealt with and the C Forms furnished are genuine, the selling dealer can accept the same without further enquiry.

20. In the present case, there is no dispute that the purchasing dealers are duly registered with the concerned authority as the registered dealers. Their registration certificates also indicate that they are registered in respect of the goods sold by the petitioner. There is no dispute that the petitioner had produced invoices and other material to establish that he had sold the concerned goods to the purchasing dealers. Under the scheme of taxation, the point of further taxation shifts to the purchasing dealer and the tax on the goods in question have to be recovered from those dealers.

21. In the circumstances, the impugned order is set aside.

22. The petition is allowed in the aforesaid terms.

23. The respondents are directed to process the petitioner's claim for refund in accordance with law as expeditiously as possible.

VIBHU BAKHRU, J

PURUSHAINdra KUMAR KAURAV, J

DECEMBER 13, 2022

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