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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on: 25th March, 2022

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W.P.(C) 10015/2019**SRIVENKATESHWARE TRADEX PRIVATE LIMITED**PetitionerRepresented by: Mr. A.K. Babbar & Mr. Surendra
Kumar, Advocates.

versus

COMMISSIONER, DELHI VALUE ADDED TAX AND ANR.

..... Respondents

Represented by: Mr. Shadan Farasat, ASC, GNCTD
with Ms. Hafsa Khan & Mr. Shorya
Dasgupta, Advocates for GNCTD.**CORAM:****HON'BLE MS. JUSTICE MUKTA GUPTA****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****NEENA BANSAL KRISHNA, J. (ORAL)**

1. This Writ Petition under Article 226 of Constitution of India read with Section 8 of Central Sales Tax Act, 1956 (*hereinafter referred to as 'CST Act'*) has been filed to challenge the order dated 05th July, 2019 passed by the respondent denying the issue of prescribed statutory Form "C" to the petitioner in respect of purchases made in the Financial Year 2016-2017.

2. Facts in brief are that the petitioner, who is a registered dealer under the CST Act, had purchased goods in the course of interstate transactions against "C" Forms. By virtue of Section 8(4) of the CST Act, the respondent is obliged to issue Form "C" in respect of the purchases made on the strength of his Registration Certificate under CST Act. The petitioner was duly assessed for the Assessment Year 2016-17 and the Interstate



purchases against Form “C” were accepted by the Assessing Authority. The petitioner applied for issuance of Form “C” on 21st June, 2019 in respect of Assessment Year 2016-17 of ₹2,24,14,584/- for third quarter and ₹1,87,17,945/- for fourth quarter in accordance with all the conditions prescribed in CST (Delhi) Forms Rule 4(1)(A), 1957. The Assessing Authority vide impugned order dated 05th July, 2019 observed that the facts stated in the application for issuance of Form “C” were true but rejected the issuance of Form “C” for the reason that the system did not permit downloading of “C” Form.

3. The impugned order dated 10th October, 2018 of the Assessing Authority has been challenged on the ground that since the Interstate purchases were reflected in the petitioner’s Books of Accounts and Balance Sheet and had been accepted for the Assessment Year, there was no reason to deny issuance of “C” Form. The reasons given for rejecting the application are erroneous. The petitioner has relied upon the decision of this court in the case of M/s Ingram Micro India Pvt. Ltd. Vs. Commissioner, Department of Trade & Taxes, (2016) 89 VST 312, wherein similar facts were involved, and it was held that the Authority was not justified in declining issue of Form “C” to the petitioner and directed issuance of Form “C” pertaining to interstate purchase transactions within three months.

4. The petitioner has thus, prayed for issue of writ of Mandamus or appropriate directions to the respondent to issue requisite number of Form “C” in respect of Assessment Year 2016-17 and correct their system for release of “C” Form.

5. The respondent in its short counter affidavit has explained that the statutory Form “C” could not be issued as the details of purchases were not



entered in prescribed Col.R-11.1 which provides for filling details of interstate trade and exports-imports against Form “C” in the returns filed with the Department. The interstate purchases against Form “C” were reflected as High Seas purchases in 3rd and 4th quarter in the returns filed for the year 2016-17. By virtue of Section 28 of Delhi Value Added Tax Act, 2004 (*herein after referred to as ‘DVAT Act’*) if any dealer or person discovers a discrepancy in a Return furnished by him under Section 26 of the DVAT Act, then such discrepancy has to be removed by filing a revised return within a period of one year following the year of such tax period. Once, the period of one year expires, the dealer cannot be allowed to rectify discrepancy by filing revised return as no such process exists under DVAT Act. The provisions of DVAT Act are extended to CST Act by virtue of sub Section 2 of Section 9 of CST Act.

6. It is further submitted by the respondent that Rule 54 of Central Sales Tax (Delhi) Rules, 2005 on which reliance has been placed by the petitioner, is not applicable to the facts in hand. It deals with the principles on which issuance of Form “C” can be withheld by the Department. Moreover, the facts in hand are squarely covered by the decision of this Court in the matter of M/s Ingram Micro India Pvt. Ltd. Vs. Commissioner (supra). This Court in Indian Oil Corporation Ltd. vs. Commissioner, Vat, Delhi & Ors. W.P.(C) No.2633/2017 decided on 11th April, 2017 and other connected petitions had given a ruling in favour of the dealers. However, Civil Appeal No.6071/2017 was preferred before Hon’ble Supreme Court wherein a stay has been granted vide order dated 01st May, 2017 and the appeal against the judgement of this Court in M/s Ingram Micro India Pvt. Ltd. is tagged along with these appeals. The petitioners cannot be thus granted the relief as



claimed by way of the present writ petition.

7. Rejoinder was filed on behalf of the petitioner to clarify that vide the impugned order dated 05th March, 2019 the respondent had accepted the Interstate purchases and had even agreed to the petitioner's claim for issue of Form "C" but the same was denied for the reason that the system for downloading Form "C" does not allow this. It is asserted that the facts involved in the present case are distinguishable and unique and petitioner is entitled to issue of "C" Form.

8. Submissions heard.

9. Section 8(1) of CST Act provides that a dealer selling goods answering the description in terms thereof, in the course of Interstate sales to another registered dealer is liable to pay 2% tax or at the rate applicable to inter-state sales whichever is low. In terms of Section 8(4) of the CST Act, it is mandatory for the selling dealer to furnish the prescribed Authority a declaration in Form "C" to be furnished by the purchasing dealer. The Form "C" has to be obtained from the Sales Tax Authority of the concerned purchasing dealer and furnished to the selling dealer.

10. Rule 5 (1) to (4) of the CST Rules, Delhi provides for the Authority from which the Declaration Form "C" may be obtained, use, custody and maintenance of records of such forms and matters incidental thereto. In terms of Rule 5(2) a request has to be made by the dealer to the Commissioner of the Department for issuance of Form "C" in Form 2C declaring the due return that has been filed for the quarters/ months and the tax due as per return has been made.

11. Rule 5(4) of the CST Rules, 1957 provides for four contingencies when a request for issuance of Form "C" may be refused by the



Commissioner after giving an opportunity of being heard. These are:

- (i) *The applicant had defaulted in furnishing any return including reconciliation return in accordance with the provisions of law or in payment of tax due according to such return; or*
- (ii) *defaulted in making of payment of the amount of tax assessed, re-assessed or the penalty imposed; or*
- (iii) *not filed proper utilization account in Form '2B' of form issued to him earlier; or*
- (iv) *some adverse material has been found suggesting any concealment of sale or purchase or furnishing inaccurate particulars in the returns.*

12. Rule 12(7) of the CST Rules, 1957 requires the selling dealer to furnish the declaration in Form "C" to the prescribed Authority within three months after the end of the period to which the declaration or certificate relates. However, proviso to Rule 12(7) of CST Rules authorizes prescribed Authority to allow further time to the selling dealer to furnish such declaration, if sufficient cause is shown. A comprehensive reading of the Rules thus reflects that there appears to be no such inflexible condition as to the time within which the request should be made by a purchasing dealer.

13. It has been rightly argued on behalf of the petitioner that the facts involved in the present case are unique. It is evident from the Assessment Order dated 10th October, 2018 in respect of Financial Year 2016-17 that it was a case where no Form "C" were found missing. The only error that occurred was in mentioning the purchase of ₹2,24,14,584 in third quarter and ₹1,87,17,945 in fourth quarter as High Seas Purchases when in fact they



were the sales made against Form “C” purchases. No Form “C” was found missing and the assessment was made on NIL demand. It is quite evident from the Assessment Order dated 10th October, 2018 that it was only an inadvertent misdescription of the purchasers for two quarter even though all the documents had been duly furnished. This fact was duly acknowledged in the Assessment Order dated 10th October, 2018 and the demand was raised as NIL. After the assessment was finalized vide order dated 10th October, 2018, the petitioner had made an application dated 21st June, 2019 for issuance of “C” Forms. The GSTO Ward observed that the facts stated in the Assessment Order were correct but the request for Form “C” was rejected solely on the ground that the downloading of Form “C” was not allowed by the system.

14. In the decision reported as (2005) 2 SCC 129 India Agendes (Regd.), Bangalore v. Additional Commissioner of Commercial Taxes, Bangalore, the Hon’ble Apex Court pointed out that the CST Rules are intended to prevent misuse of Form “C” and that the very purpose of filing the Form “C” was to ensure that there should not be any suppression of interstate sales by selling dealer and evasion of tax to State from where the actual sales are effected. Secondly, the purchasing dealer also cannot suppress such purchases once he issues Form “C” to the selling dealer.

15. It is not a case where there is a default or concealment or adverse material is found by the Commissioner suggesting inaccurate particulars in the returns. It is the case where all the documents and particulars were furnished correctly except that the purchases were inadvertently misdescribed as High Seas instead of Form “C” purchases. The sole reason for declining the Form “C” is not that the petitioner is not entitled but



merely that the system does not permit the downloading of “C” Form.

16. Rule 5(4) (i) of the CST Delhi Rules is not attracted in the facts of this case. There was no failure on the part of the Petitioner to furnish a return, including reconciliation return or return in accordance with the provisions of law or in payment of tax due according to such return. In fact, the tax demand was “Nil” and there was no loss on account of Tax revenue to the Department.

17. The Ld. Counsel for the respondent states that Indian Oil Corporation Ltd. and its connected cases including M/s Ingram Micro (supra) involving similar issues was challenged in Civil Appeal No. 4573/2017. The Hon’ble Supreme Court has granted stay vide order dated 01st May, 2017. The petitioner thus cannot place reliance upon M/s Ingram Micro (supra).

18. Ld. Counsel for the Respondent has however not placed on record the facts involved in Indian Oil Corporation Ltd. (supra) and other petitions. Moreover, the controversy in the present case as detailed above, is not in respect of entitlement of the petitioner to issuance of Form “C” or being in violation of the Rules. Rather the petitioner has been held entitled to issuance of Form “C” but the refusal is solely limited to the administrative incapacity of the respondent to issue Form “C” as the system does not so permit. The petitioner, therefore, who is held entitled to issuance of Form “C” cannot be deprived of the same on technical reason of failure of the electronic system to generate the “C” Form.

19. While in present day and age, technology has immensely facilitated the business transactions but it cannot be permitted to take over completely and prevent the genuine entitlements of the petitioner to be denied merely on the technical ground that the system does not so permit. The systems have been



created purely for facilitating and simplifying the business transactions and cannot be self defeating. The respondent cannot plead its helplessness on the ground of the system not enabling it to do so. Once the petitioner is held to be entitled to “C” Form, the same cannot be denied for technical or administrative reasons as has been observed by Hon’ble Supreme Court in the decision of State of H.P. v. Gujarat Ambuja Cement Ltd. (2005) 6 SCC 499.

20. The Writ petition is accordingly allowed and the respondent is directed to furnish the Form “C” for the Financial Year 2016-2017 to the petitioner within 3 months.

(NEENA BANSAL KRISHNA)
JUDGE

(MUKTA GUPTA)
JUDGE

MARCH 25, 2022

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