(2018) 06 CAL CK 0040

In the Calcutta High Court

Case No : Writ Petition30702 (W) of 2016

Indian Chain Private Limited & Anr. APPELLANT

Vs

Deputy Commissioner, Central Audit Unit & Ors. RESPONDENT

Date of Decision : 27-06-2018

Acts Referred:
Central Sales Tax Act, 1956 — Section 5, 5(3)

Citation : (2018) 06 CAL CK 0040

Hon'ble Judges : DEBANGSU BASAK, J

Bench : Single Bench

Advocate : Ananda Sen, Sabyasachi Mandal, Abhratosh Mazumder, Prithu Dudhoria, Avra Mazumder

Final Decision : Disposed Of

Judgement

An order dated June 30, 2016 passed by the revisional authority is under challenge in the present writ petition on two grounds. On one ground, the

petitioners claim to have received C forms subsequent to the impugned order. They seek one opportunity for adjudicating the subsequent C forms. The

other ground is the disallowance of the H forms. Learned advocate for the petitioners submits that, the revisional authority ought to have taken into

consideration the fact that, the burden of proof of establishing that the form H submitted for assessment was correct, lay on the department rather

than on the assessee.

In support of such contention he relies upon 1999 (113) STC 49 (K.G. Industries Vs. Sales Tax Officer & Ors.), a judgment and order dated August

28, 2015 (Swastik Industrial Powerline Ltd. Vs. Commissioner Trade & Taxes, Delhi) of the Delhi High Court, 2004 (138) STC 383 (Rajasthan Pipes

Pvt. Ltd. Vs. Commercial Tax Officer Assessment Wing & Ors.) and judgment and order dated February 10, 2017 of the Calcutta High Court passed

in W.P. No.2667(W) of 2017 (M/s. Industrial Appliances & Technologies & Anr. Vs. Commissioner of Sales Tax, West Bengal & Ors.) Learned

Additional Advocate General appearing on behalf of the respondents submits that, the petitioners claim to be the last vendor of the goods exported. He

refers to the various provisions of Central Sales Tax Act, 1956 particularly Section 5 thereof. According to him, the petitioners are required to

complete the link in terms of provisions of Section 5 for it to claim the exemptions. In the present case, the petitioners did not submit appropriate

materials before the assessing authority to complete the link. Since the form H submitted was inchoate and incapable of being understood, the claim

was disallowed. The burden of proof lies on the assessee.

He relies upon 2010 (9) SCC 524 (State of Karnataka Vs. Azad Coach Builders Pvt. Ltd. & Anr.) in support of his contentions. There are two-fold

claims in the present writ petition. One claim relates to receipt of C form received by the petitioner subsequent to the order of the revisional authority.

The other relates to disallowance of the claim in support of H form. The petitioners claim that they come within Section 5(3) of the Central Sales Tax

Act, 1956. Section 5 of the Act of 1956 is as follows :-

5. When is a sale or purchase of goods said to take place in the course of import or export.-

1) A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or

purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs

frontiers of India.

2) A sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or

purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs

frontiers of India.

3) Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export

of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export.

4) The provisions of sub-section (3) shall not apply to any sale or purchase of goods unless the dealer selling the goods furnishes to the prescribed

authority in the prescribed manner a declaration duly filled and signed by the exporter to whom the goods are sold in a prescribed form obtained from

the prescribed authority.

5) Notwithstanding anything contained in sub-section (1), if any designated Indian carrier purchases Aviation Turbine Fuel for the purposes of its

international flight, such purchase shall be deemed to take place in the course of the export of goods out of the territory of India. Explanation.- For the

purposes of this sub- section, â??designated Indian carrierâ? means any carrier which the Central Government may, by notification in the Official

Gazette, specify in this behalf.â??

Azad Coach Builders Pvt. Ltd. (Supra) considers Section 5 of the Act of 1956. It is of the following view :â??27. The phrase â??sale in the course

of exportâ? comprises in itself three essentials : (i) that there must be a sale; (ii) that goods must actually be exported; (iii) that the sale must be a part

and parcel of the export. The word â??occasionâ?? is used as a verb and means â??to causeâ?? or â??to be the immediate cause ofâ??. Therefore, the

words â??occasioning the exportâ? mean the factors, which were the immediate cause of export. The words â??to comply with the agreement or

orderâ? mean all transactions which are inextricably linked with the agreement or order occasioning that export. The expression â??in relation toâ?

are words of comprehensiveness, which might both have a direct significance as well as an indirect significance, depending on the context in which it

is used and they are not words of restrictive content and ought not be so construed. Therefore, the test to be applied is, whether there is an

inseverable link between the local sale or purchase and export and if it is clear that the local sale or purchase between the parties is inextricably linked

with the export of the goods, then a claim under Section 5(3) for exemption from State sales Tax is justified, in which case, the same goods theory has

no application.

28. The facts of this case clearly reveal thatthe transaction between the assessee and the exporter is inextricably connected with the export of the

goods to Sri Lanka. The Communication between the foreign buyer and the exporter reveals that the foreign buyer wanted the bus bodies to be

manufactured by the assessee under the specifications stipulated by the foreign buyer. The bus bodies constructed and manufactured by the assessee

could not be of any use in the local market, but were specifically manufactured to suit the specifications and requirements of the foreign buyer.

In the purchase order placed on the assessee by the exporter, it is specifically indicated that the bus bodies have to be manufactured in accordance

with the specifications provided by the foreign buyer, failure to do so might result in cancellation of the export order. The assessee in this case has

succeeded in showing that the sale of bus bodies have occasioned the export of goods. When the transaction between the assessee and the exporter

and the transaction between the exporter and foreign buyer are inextricably connected with each other, in our view, the â??same goodsâ? theory has

no application.

29. We may also indicate that the burden isentirely on the assessee to establish the link in transactions relating to sale or purchase of goods and to

establish that the penultimate sale is inextricably connected with the export of goods by the exporter to the foreign buyer, which in this case the

assessee has succeeded in establishing.â??

K.G. Industries (Supra) is a case where the department had taken the point of collusion in respect of the forms submitted, for the first time, before the

High Court. Such point was not allowed to be canvassed at such stage, although holding that, such a point was available to the department at the

earlier stages. Swastik Industrial Powerline Ltd. (Supra), in the facts of the case, does not find that, the department had doubted the existence of the

purchasing dealers at the relevant point of time. It also notes that, it was possible for the department to establish that the forms itself were fraudulently

issued or procured from the department. In Rajasthan Pipes Pvt. Ltd. (Supra), an order of the Commercial Tax Officer was under challenge. On

facts, it finds that the grounds, on which the benefits were refused, were untenable. The grounds of refusal were in respect of corrections of the

contents of the forms, rather than its genuineness. M/s. Industrial Appliances & Technologies & Anr. (Supra), on facts finds the revisional authority to

have overlooked a vital piece of evidence. It remands the matter for fresh consideration.

Genuineness of the forms can be questioned by the department. It is open to the department, in a given case, to allege fraud or collusion. It is for the

assessee to establish, by cogent evidence, the link under Section 5(3) of the Act of 1956 to be installed to claim the benefits thereunder. The

petitioners had opportunity before the Assessing Officer, appellate authority and the revisional authority to produce relevant documents in support of

their claim relating to H forms. The revisional order impugned in the present writ petition returns a finding so far as H forms are concerned.

It finds such H forms to be pre-dated, defective and incomplete. Effectively, the genuineness of the forms is questioned. The link is not found. The

relevant H forms are annexed to the writ petition. The H forms disclosed in the writ petition do not permit a different view than that expressed in the

impugned order be taken. The H forms are incomplete as it does not give the details so as to complete the link under the provisions of Section 5 of the

Central Sales Tax Act, 1956. The petitioners therefore have failed to establish the link.

In such circumstances, the reliefs sought for with regard to the revisional order relating to H forms cannot be accepted. So far as C forms are

concerned, since the petitioners have received the same subsequent to the order passed by the revisional authority, it would be appropriate to remand

the revisional application to the revisional authority limited to the fresh C forms received by the petitioners subsequent to the order passed by the

revisional authority. The impugned order is quashed to such extent. W.P. No.30702 (W) of 2016 is disposed of accordingly. No order as to costs.

Urgent certified Website copy of this order, if applied, be supplied to the parties, upon compliance of all requisite formalities.