

(2016) 06 DEL CK 0026
In the Delhi High Court
Case No : W.P. (C) 1358 of 2016

Jain Manufacturing (India) Pvt. Ltd.

APPELLANT

Vs

The Commissioner Value Added Tax

RESPONDENT

Date of Decision : 01-06-2016

Acts Referred:

Central Sales Tax (Registration and Turnover) Rules, 1957 — Rule 12(1)
Central Sales Tax Act, 1956 — Section 7(4), 8(1)(b)

Citation : (2016) 7 ADDelhi 139

Hon'ble Judges : S. Muralidhar and Vibhu Bakhru, JJ.

Bench : Division Bench

Advocate : Mr. Vinod Srivastava, Mr. Ravi Chandhok and Ms. Vertika Sharma, Advocates, for the Appellant; Mr. Gautam Narayan, Additional Standing counsel with Mr. R.A. Iyer, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Dr S. Muralidhar, J.—This is a writ petition by a company having its registered office in Kanpur, Uttar Pradesh engaged in trading of duty entitlement pass book scrips. The Petitioner is registered under the Central Sales Tax Act, 1956 (CST Act) and has been given a Tax Identification Number (TIN) in the State of Uttar Pradesh.

2. The Petitioner is aggrieved by the action of the Commissioner, Value Added Tax (VAT) in the Department of Trade and Taxes (DT&T), New Delhi in, inter alia, cancelling the Form-C issued by the DT&T with regard to the purchases made from the Petitioner by Respondent No.2 i.e. Keshav Corporation at 334/1, Gali No. 3, Vishwas Nagar, Delhi-110032.

Background facts

3. The Petitioner made an inter-state sale of goods to Respondent No. 2 (Purchasing Dealer) by way of two invoices both dated 10th March, 2015. The first invoice was for a sum of Rs. 7,53,373/- and the second for a sum of Rs.

2,49,715/-. In terms of Section 8(1) (b) of the CST Act with Respondent No. 2 being a dealer registered under the CST Act in New Delhi [apart from being registered under the Delhi Value Added Tax Act, 2004 (DVAT Act)] as of that date, and having purchased the goods from the Petitioner by way of inter-state sale, tax at the concessional rate of 2% was chargeable in the invoices and was accordingly included in the invoices raised by the Petitioner. The said two invoices accordingly mentioned the CST amounts as 15,067 and 4,994 respectively. The total sums of the 2 invoices were Rs. 7,68,441/- and Rs. 2,54,709/- respectively. The payments for these invoices were made by RTGS into the Petitioner's bank account.

4. On 13th April 2015, Respondent No. 2 obtained C-Form from the DT&T in respect of the aforementioned two invoices. A copy of the said C-Form is enclosed with the petition as Annexure P-4. It shows that it was a system generated C-Form containing details of the purchasing dealer i.e. Respondent No.2 with its Registration Certificate Number and the amount up to which such registration is valid. The name and address of the purchasing dealer i.e. Respondent No. 2 has also been indicated. It also bears the TIN and name of the selling dealer i.e. the Petitioner. It contains the details of the two invoices dated 10th March, 2015 with the respective amounts.

5. The Petitioner later learnt that the above C-Form had been cancelled by the DT&T. In order to verify this, the Petitioner checked the website of the DT&T. The status of the C-Form issued to the Petitioner was shown as cancelled on 27th November, 2015. The Petitioner also obtained a copy of an order passed by the Assistant Value Added Tax Officer (AVATO) in Form DVAT-11 on 4th August, 2015 cancelling the registration of Respondent No.2. A copy of the said cancellation order has been enclosed as Annexure P-6 to the petition. It was noticed that the cancellation was made retrospective from 26th February, 2014.

6. It is in these circumstances, the present petition has been filed contending that there was no power under the CST Act or in the Rules thereunder, viz., the Central Sales Tax Act (Registration & Turnover) Rules, 1957 or the Central Sales Tax (Delhi) Rules to cancel a C-Form issued by the DT&T.

Submissions of counsel for the Petitioner

7. It is contended by Mr. Vinod Srivastava, learned counsel for the Petitioner, that in the present case the C-Form was cancelled only because the registration of Respondent No.2 under the CST Act was cancelled retrospectively from 26th February 2014 although there was no power under the CST Act to do so. It is contended that as far as Petitioner is concerned, as a selling dealer it is only required to ensure that on the date of the sale to Respondent No. 2, the latter as a purchasing dealer held a valid registration under the CST Act in Delhi. The subsequent cancellation of such registration retrospectively from a date earlier to the sale would not, according to the Petitioner, affect the validity of the C-Form issued to the Petitioner since on the date of issuance of such C-Form Respondent

No.2 was validly registered under the CST Act.

8. Mr. Srivastava placed reliance on the decisions in *State of Maharashtra v. Suresh Trading Company*, (1998) 109 STC 439 (SC) and *State of Orissa v. Santosh Kumar & Co.*, (1983) 054 STC 322 (Orissa) to contend that the retrospective cancellation of the CST registration of the purchasing dealer would not affect right of the selling dealer to use the C-Form validly issued to such selling dealer. Reliance is also placed on the decision of this Court in *Shanti Kiran India Pvt. Ltd. v. Commissioner Trade & Tax Department*, (2013) 57 VST 405 (Delhi) where it was held that the input tax credit could not have been denied for a period prior to the date on which the registration of the selling dealer was cancelled.

Submissions of counsel for the Respondent No.1

9. Mr. Gautam Narayan, learned Additional Standing counsel appearing for the DT&T, first submitted that this was a proxy litigation on behalf of the Respondent No. 2 who has himself not come forward to challenge the cancellation of his CST registration. It is submitted that the Petitioner, a dealer in Kanpur, has no locus whatsoever to question the cancellation of the CST registration of Respondent No.2. Secondly, it is submitted that under Section 74 of the DVAT Act, the Petitioner has an alternative remedy of approaching the Objection Hearing Authority. It is pointed out that Section 74(1)(b) permits "any person who is dissatisfied with any other order or decision made under this Act" to file objections before the OHA.

10. On merits, it is submitted by Mr. Narayan that the transactions of sale involving the Petitioner and Respondent No. 2 were under a cloud because enquiries made by the DT&T revealed that the name of the Proprietor of Keshav Corporation in its bank account from where the RTGS transfer of the invoice amounts took place to the account of the Petitioner was different from the name of the Proprietor of Keshav Corporation available with the DT&T. The address of the said Keshav Corporation in the bank account was also different from the address shown in the DT&T records viz., 334/1, Gali No. 3, Vishwas Nagar, Delhi-110032. In other words, the entity which paid the sums to the Petitioner against the invoices raised by the Petitioner may have been "Keshav Corporation" but it was not the entity to which C-Forms were issued by the DT&T. Mr. Narayan submitted that the DT&T was justified in cancelling the C-Form because it suspected that there was collusion between the Petitioner, the entity which made the payment and perhaps Respondent No. 2 in obtaining the C-Form. Mr. Narayan states that the CST (and the DVAT) registration of Respondent No. 2 was cancelled since Respondent No. 2 was not found at the address given, viz., 334/1, Gali No. 3, Vishwas Nagar, Delhi-110032.

11. Referring to Section 8(1) (b) of the CST Act as well as Rule 12(1) of the Central Sales Tax (Registration & Turnover) Rules 1957, Mr. Narayan submitted that the for issuance of C-Form the existence of valid CST registration of the

purchasing dealer was a sine qua non. Reliance is also placed on the decision of the Supreme Court in Commissioner of Sales Tax, Delhi v. Shri Krishna Engg. Co., (2005) 2 SCC 692 to urge that there is no vested right in the purchasing dealer to insist issuance of C-Forms in his favour. Where, as in the present case, the purchasing dealer does not have a valid registration, then it is not open to the selling dealer to question the cancellation of the C-Form issued to such purchasing dealer.

12. Mr. Narayan was unable to however to dispute the fact that there is no provision in the CST Act for cancellation of the C-Form. He submitted that under Section 7(4) of the CST Act the registration granted under the CST Act can be cancelled by the authority which granted it. However, he again did not dispute that under Section 7 (4) (b) of the CST Act retrospective cancellation of a registration is not contemplated.

Preliminary objections

13. As far as the plea of the Respondent No. 1 regarding this being a proxy litigation on behalf of the Respondent No.2, Mr. Srivastava submits that the Petitioner is essentially concerned about the cancellation of the C-Form issued to it. The Petitioner was constrained to also challenge the cancellation of the registration of Respondent No.2 by the DT&T only because that was the main reason for the cancellation of the C-Form.

14. In view of the above clarification by Mr. Srivastava, it is apparent that the Petitioner is pressing only for the relief of validation of the C-Form issued to it. Consequently, the Court rejects the plea of the DT&T that this is a proxy litigation by Petitioner on behalf of Respondent No.2. It is clarified that the Court is not expressing any view as far as the cancellation of the registration of Respondent No. 2 is concerned.

15. As regards the plea regarding the availability of an alternative remedy under Section 74 (1) (b) of the Act, it appears to the Court that the person directly affected the decision of the DT&T to cancel the C-Form is the Petitioner i.e. the selling dealer. The purchasing dealer cannot be said to be affected by that decision since the purchasing dealer has taken advantage of Section 8 (1) (b) of the CST Act and paid the lesser tax of 2% on the interstate sale. The present petition raises an important question of law regarding the absence of a power under the CST Act or the Rules made thereunder to cancel a C-Form. This requires interpretation of the relevant provisions. In the circumstances, the Court does not consider it appropriate to relegate the Petitioner to the statutory remedy of going before the OHA as that is not efficacious in the facts of the present case.

No power to cancel a C Form

16. The central issue in the present case is whether there exists a power in the Commissioner VAT, Delhi under the CST Act and the Rules thereunder to cancel a

C-Form and further if such power exists then whether in the facts and circumstances of the present case such power was rightly exercised.

17. No provision in the CST Act has been brought to the notice of the Court which enables an authority issuing a C-Form to cancel the C-Form. Rule 5(4) of the Central Sales Tax (Delhi) Rules, 2005 enables the authority which has to issue a C-Form to "withhold" the C-Form. The contingencies under which a C Form may be withheld are set out in Rule 5(4). For instance, Rule 5 (4) (v) envisages that some adverse material has been found by the Commissioner "suggesting any concealment of sale or purchase or furnishing inaccurate particulars in the returns." The Commissioner could, in terms of the proviso to Rule 5(4), instead of withholding the C-Form, issue to the applicant such forms in such numbers and subject to such conditions and restrictions, as he may consider necessary. However, there is no specific provision even under the aforementioned Rules which enables the Commissioner to cancel the C-Form that has already been issued.

18. There is merit in the contention that one of the primary requirements for issuance of a C-Form is that the dealer to whom the C-Form is issued has to have a valid CST registration on the date that the C Form is issued. If the purchasing dealer does not possess a valid CST registration on the date of the transaction of sale, then the selling dealer cannot insist on being issued a C-Form. In the present case, on the date of the transaction i.e. 10th March, 2015 the purchasing dealer viz., Respondent No. 2 did possess a valid CST registration. The name of the purchasing dealer as shown in the invoices, and the name and address of the registered purchasing dealer as reflected in the C-Forms issued by the DT&T matched. The cancellation of the CST registration of Respondent No. 2 took place subsequently on 4th August 2015. Therefore, there was no means for the Petitioner as the selling dealer to suspect as of the date of sale or soon thereafter that the payments made to it RTGS was not by Respondent No.2 but by some other entity with the same name. It is not possible, therefore, to straightaway infer any collusion between the Petitioner and Respondent No. 2 or for that matter the other entity of the same name spoken of by the DT&T.

19. In any event, from the point of view of the Petitioner, the requirement of Section 8(1) of the CST stood fully satisfied. The purchasing dealer had a valid CST registration on the date of purchase of goods by the Respondent No. 2 from the Petitioner. The C-Form issued by the DT&T confirmed the registration of Respondent No.2 under the CST Act.

20.1 In the State of Maharashtra v. Suresh Trading Company (supra), the facts were that between 1st January and 31st December 1967, the Respondents purchased goods from Sulekha Enterprises Corporation (SEC) who were registered dealers under the Bombay Sales Tax Act, 1959. On the date of such sale the registration of SEC was valid. The Respondents claimed deduction in the turnover of sales on that basis. This was disallowed by the Sales Tax Officer on the ground that the registration of SEC had been cancelled on 20th August 1967

with retrospective from 1st January 1967. Therefore, on the dates on which the Respondents had purchased the goods, SEC could not be said to be a registered dealer. The STO proceeded to impose penalty on the Respondents.

20.2 The High Court of Bombay reversed the decision of the STO and the High Court's decision was affirmed by the Supreme Court which observed as under:

"A purchasing dealer is entitled by law to rely upon the certificate of registration of the selling dealer and to act upon it. Whatever may be the effect of a retrospective cancellation upon the selling dealer, it can have no effect upon any person who has acted upon the strength of a registration certificate when the registration was current. The argument on behalf of the department that it was the duty of persons dealing with registered dealers to find out whether a state of facts exists which would justify the cancellation of registration must be rejected. To accept it would be to nullify the provisions of the statute which entitle persons dealing with registered dealers to act upon the strength of registration certificates."

21. This Court in *Shanti Kiran India Pvt. Ltd. v. Commissioner Trade & Tax Department* (supra) followed the above decision and observed as under:

"This Court is of the opinion that in the absence of any mechanism enabling a purchasing dealer to verify if the selling dealer deposited tax, for the period in question, and in the absence of notification in a manner that can be ascertained by men in business that a dealer's registration is cancelled (as has happened in this case) the benefit of input credit, under Section 9(1) cannot be denied. Furthermore, this Court notices that the cancellation of both selling dealers' registration occurred after the transactions with the appellant. The VAT authorities observed that the scanty amounts deposited by the selling dealers was incommensurate with the transactions recorded, and straightaway proceeded to hold that they colluded with the appellant. Such a priori conclusions are based on no material, or without inquiry, and accordingly unworthy of acceptance."

22. In *State of Orissa v. Santosh Kumar* (supra), the deduction in respect of sales made to a registered dealer was disallowed on the ground that the purchasing dealer was fictitious although the purchaser dealer held a valid registration on the date of the transaction. In those circumstances, it was observed as under:

"Once a certificate of registration is issued to a person and he becomes a registered dealer, he is entitled to certain benefits under the Act. Certificates granted by the public officers have their value and people in the commercial field would in normal course accept such certificates to be genuine. The fact that registration has been granted, yet the person holding the certificate is a fictitious one seem to be contradictions in term. A certificate of registration can be granted only when the dealer, apart from being a businessman, satisfies the other requirements prescribed by law. A registration certificate cannot be granted to a

non-existent person. The fact that there have been some persons who are labelled by the department as fictitious dealers goes to show that the officers under the Act either collude with dishonest people in the field or fail to exercise due diligence and allow fraud to be practised in the commercial field. Whether it is collusion or negligence, these officers bring disrepute to the State and introduce uncertainty and lack of confidence into a true field of trust. It is high time that the State Government institutes appropriate enquiries, take such steps as are necessary to eliminate fictitious dealers from the field and also take strong action against persons connected with such matters so that there be no recurrence of it in future."

23. A reference in this regard is also made to the decision of the Supreme Court in *State of Madras v. Radio Electrical Ltd. and Anr.*, 1966 (18) STC 222 (SC) where, inter alia, it was observed as under:

"He (the seller) 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...."

24. The decision in *Commissioner of Sales Tax, Delhi v. Shri Krishna Engg.* (supra) relied on by learned counsel for the DT&T is distinguishable inasmuch as it dealt with a situation of no C-Form having been issued and the selling dealers approaching the Court for a direction to the concerned Sales Tax Department to issue such C-Forms. It is in that context that it was observed that the registration is really in the nature of a concession and not a matter of right and that it was conditional upon fulfilment of certain statutory requirements.

25. In the present case with their being a valid registration of the purchasing dealer on the date of the transaction and the C-Form having been validly issued on the date it was so issued, there could not have been a retrospective cancellation of the C-Form. At the risk of repetition, it must be observed that there is no statutory power that permits cancellation of a C-Form that has been validly issued, much less retrospectively. The only circumstance perhaps that could lead to the cancellation of a C-Form is the failure by the issuing authority to notice the cancellation of the purchasing dealer's CST registration previous to the date of the sale. That would be a case of a purchasing dealer obtaining a C Form by fraudulent means concealing the fact of cancellation of his CST registration. The issuance of a C Form in such instance would be void ab initio since it would not satisfy the requirement of Section 8 (1) of the CST Act read with Section 7 (4) thereof.

The practical effect of cancellation of C Forms

26. It was submitted by Mr. Narayan that there would be a practical difficulty in the DT&T seeking to inform every selling dealer in the country of the cancellation of registration of a purchasing dealer registered under the CST Act in Delhi and that the remedy of the selling dealers in such instance would be to proceed against the purchasing dealers. In the considered view of the Court, if the selling dealer has after making a diligent enquiry confirmed that on the date of the sale the purchasing dealer held a valid CST registration, and is also issued a valid C Form then such selling dealer cannot later be told that the C Form is invalid since the CST registration of the purchasing dealer has been retrospectively cancelled. Where, a selling dealer fails to make diligent enquiries and proceeds to sell goods to a purchasing dealer who does not, on the date of such sale, hold a valid CST registration then such selling dealer cannot later be seen to protest against the cancellation of the C-Form. As observed by the Supreme Court in *Commissioner of Sales Tax, Delhi v. Shri Krishna Engg. (supra)* the selling dealer in such instance will have to pay for his "recklessness".

27. To answer the problem highlighted by Mr. Narayan, the best course of action would be for an authority to cancel the CST registration prospectively and immediately place that information on its website. In such event, there would be no difficulty in the selling dealer being able to verify the validity of the CST registration of the purchasing dealer. However, where the cancellation of the registration and, consequently of the C-Form is sought to be done retrospectively, it would adversely affect the rights of bona fide sellers in other states who proceeded on the basis of the existence of valid CST registration of the purchasing dealer on the date of the inter-se sale. That outcome is not contemplated by the CST Act and the Rules thereunder.

Conclusion

28. For the above reasons, the order passed by the DT&T cancelling the C-Form issued to the Petitioner in the present case with effect from 27th November 2015 is hereby set aside. The Petitioner will continue to treat the said C-Form issued to it as having been validly issued.

29. The DT&T shall, not later than ten days from today, make the necessary corrections on its website to indicate the validation of the above C-Form.

30. The writ petition is disposed of with the above terms. Dasti under the signature of the Court Master.