

(2018) 03 CHH CK 0256
In the Chhattisgarh High Court
Case No : Writ Petition (T) No.71 of 2013

M/S AVINASH TRADERS

APPELLANT

Vs

STATE OF CHHATTISGARH AND ORS

RESPONDENT

Date of Decision : 23-03-2018

Acts Referred:

Value Added Tax Act, 2005 — Section 49(1)

Citation : (2018) 03 CHH CK 0256

Hon'ble Judges : P. SAM KOSHY

Bench : Single Bench

Advocate : Anumeh Shrivastava, Anand Dadariya

Final Decision : Dismissed

Judgement

1. The present writ petition has been filed challenging the order passed by the Additional Commissioner, Commercial Tax, Raipur on 05.03.2013

(Annexure P/1) whereby the revision petition filed by the petitioner challenging the order dated 25.09.2012 (Annexure P/2) passed by the Divisional

Deputy Commissioner, Commercial Tax, Bilaspur, was partly allowed. Order dated 25.09.2012 (Annexure P/2) is also under challenge in the present

writ petition.

2. The brief facts of the case is that, the petitioner is a dealer engaged in the business of Cycle and Cycle parts. The dispute pertains to the

assessment year 2004-05. The allegation against the petitioner is that, he has wrongly availed concessional rate of tax by using forged and fake C-

Form. This act on the part of the petitioner was detected at a later stage and therefore a decision was taken for reopening of the assessment so made.

After reassessment, the concerned officer found that the present petitioner had wrongly availed the concessional rate of tax and thus demanded a tax

liability of more than 10,58,660/-with penalty of Rs.21,17,320/-.

3. Against the said order of reassessment, the petitioner had preferred a revision petition before the revisional authority under Section 49(1) of the

Value Added Tax Act, 2005 (in short, the VAT Act). The revisional authority maintaining the order of the authority made under reassessment,

modified the order to the extent of the amount of penalty imposed being reduced to Rs.10,48,660/- instead of Rs.21,17,320/-. It is this order which is

under challenge by the petitioner. The petitioner has restricted his challenge only to the imposition of penalty and have not challenged the order under

reassessment.

4. According to counsel for the petitioner, the petitioner cannot be held responsible for payment of penalty part for the simple reason that he is not at

fault so far as furnishing of C-Form is concerned. It is the contention of the petitioner that the petitioner in the capacity of selling dealer usually obtains

C-Form from the purchasing dealer and on each transaction he obtains C-Form from the purchasing dealer and the same is promptly submitted with

the department and since the sale by the petitioner has not been doubted, questioned or enquired, C-Form submitted by the purchasing dealer under

bonafide belief of being proper, legal and valid was submitted before the authorities. That if at a later stage the same is alleged to be found false, fake

or forged, the petitioner in the capacity of selling dealer cannot be penalized for the said act on the part of the purchasing dealer.

5. It was also the contention of the petitioner that once when there is an assessment order made and subsequently if the department thinks the same

had to be reopened doubting the certificates produced by the petitioner with which he had claimed tax benefit at a concessional rate, the burden of

proof fell on the department and it was the bounden duty of the department/ revenue to have first authentically inquired and established the fact that C-

Form issued by the petitioner were found to be forged or fake which in the instant case has not been done by the department, and therefore, the

impugned order deserves to be set aside.

6. According to the petitioner, they had received C-Form in the routine business transaction that were undertaken between the petitioner and the

purchasing dealer and that in the course it was believed to be genuine and they had no reason to doubt the same. The contention of the petitioner all

along was that the petitioner cannot be found fault with even if there is alleged fraud played, the same has been done at the hand of the purchaser and

not that the petitioner. In the capacity of selling dealer the petitioner cannot be penalized for any false declaration or false C-Form furnished by the

purchasing dealer. That the department ought to have first initiated action against the said purchasing dealer who had furnished fake C-Form and only

then the present petitioner should had been prosecuted.

7. In the instant case the records does not show any proceedings to have been drawn against the purchasing dealer. Since the petitioner was not able

to produce valid C-Form to the department, the petitioner at best could have been imposed with the liability of payment of full rate of tax which was

liable to be paid. Hence the petitioner would be required to pay on the difference of the total tax liability minus the rate already paid. That for all these

reasons, the petitioner prays for the petition to be allowed and penalty part imposed by the department be set aside/quashed.

8. In support of his contention, he relied upon the judgment of Madras High Court in case of 2011(37) VST 94 (Mad) TVL Sastha Enterprises Vs.

The Appellate Authority Commissioner.

9. The liability of payment of penalty could have been fastened upon the assessee only in case if the department i.e. the revenue is able to establish by

leading cogent evidence in respect of their being collusion between the selling dealer and the purchasing dealer, which according to petitioner, the

respondent/department has miserably failed and in the absence of any allegation or evidence of collusion between the selling dealer and the purchasing

dealer, the selling dealer cannot be fastened with the liability of payment of penalty. In this regard, the petitioner has also relied upon the decision of

Delhi High Court in 2013 (59)VST-1(Delhi), Milk Food Ltd. Vs. Commissioner Vat & Ors. and also 2007(3)ILR (Raj.) 434, Assistant Commissioner,

Commercial Taxes Vs. M/s Metro Appliances Ltd..

10. The contention of the petitioner is also that the petitioner should not have been fastened with the liability of payment of penalty for the reason that

neither in the past nor subsequent to the reassessment order being made for the year 2004-05 have there been any similar allegation against the

petitioner at any point of time which again shows the bonafides on the part of the petitioner.

11. Per contra, the State Counsel opposing the petition submitted that the contention put forth by the counsel for the petitioner is totally baseless and that there is no illegality or perversity on the part of authorities while passing the two impugned orders (Annexures P/2 and P/1). According to State counsel, it is not a case where the purchasing dealer had furnished C-Form which were found to be fake. Rather, it is the C-Forms which were furnished by the petitioner in the capacity of selling dealer to the department which were found to be forged and fake. If we simply look into the proceedings drawn by the department, it would reveal that C-Forms which were found to be fake and forged were said to be issued from two States i.e. from Odisha and Andhra Pradesh and the department has got it verified from both the States and it was found that C-Forms furnished were bogus and that such purchaser did not exist at all. TIN numbers furnished in respect of these purchasing dealers also were not matching and thus it is revealed that furnishing of C-Forms were at the instance of the petitioner. Therefore, the finding cannot be said to be erroneous or bad in law and the petition deserves to be rejected. Referring to provisions of the VAT Act, the State took the court through the provisions of levying of tax and also on the penalty envisaged under the VAT Act and submitted that the petition is totally devoid of merit and the same deserves to be rejected.

12. Having heard the contentions put forth on either side and on perusal of records and the citations furnished, what clearly reflects from the proceedings is that admittedly the petitioner had been assessed for the assessment year 2004-05. Though the petitioner had paid VAT at the concessional rate after providing C-Forms pertaining to alleged sale made by the petitioner through alleged dealers at Odisha and in the State of Andhra Pradesh. However, subsequently it was detected that these C-Forms which were furnished by the petitioner were not genuine and therefore there was reassessment initiated against the petitioner and was directed to provide proof and also to establish the genuinity of C-Forms which he had furnished in respect of sale transactions that were made in Orissa as well as in the State of Andhra Pradesh.

13. Proceedings also reveal that the petitioner was granted ample opportunity to substantiate their claim so far as C-Forms furnished were genuine in nature. Since the petitioner failed to produce sufficient evidence in this regard, the officer concluded re-assessment and found the petitioner to have

used forged and fake document for payment of tax at a concessional rate. The Assessing Officer reached to the conclusion that the authorities have wrongly imposed liability of payment of tax at Rs.10,58,660/-. The petitioner preferred a revision petition. The revisional authority also upheld the finding of the Assessing Officer except interfering with the quantum of penalty where it was reduced equal to the amount assessed.

14. What is pertinent to take note of is the fact that the petitioner has restricted this petition only to the extent of imposition of penalty. That means, so far as reassessment and the liability which have been fastened are concerned, they are not under challenge or is acceptable to the petitioner. If the petitioner accepts the liability made on reassessment, it would amount to an admission of the lapse or fault on the part of the petitioner. Under such circumstances, the finding of imposition of penalty cannot be said to be in any manner erroneous. What cannot be also lost sight of also is the fact that the findings of Assessing Officer in the course of reassessment is that C-Forms which were submitted by the petitioner were found to be fake and forged. It is a case where the existence of the purchasing dealer itself has not been established or proved. The whereabouts of the purchasing dealer also could not be traced. The documents were found to be bogus. The TIN numbers were also wrong and incorrect or were not issued from the said office.

15. Under such circumstances, it was the petitioner's responsibility to have produced sufficient material before the authorities concerned to show the details of the actual purchasing dealer. The petitioner inspite of sufficient opportunity being granted could not produce any material in this regard before the authorities concerned. Hence, it has to be presumed that bogus C-Form were infact used by the petitioner with an intention of availing the benefit of concessional rate of tax.

16. Thus, once when the C-Form produced by the petitioner were found to be false and they were not in a position to establish the genuinity of the document and the existence of the purchasing dealers coupled with the fact that the petitioner has not opted for challenging the assessment made during reassessment except for penalty part, it cannot be said to be in any manner bad in law or arbitrary nor can it be said to be contrary to the provisions of law or is to the violative of any provisions of VAT Act.

17. So far as the judgments referred to by the petitioner is concerned, the same would not come to the rescue of the petitioner for the simple reason

that in none of those cases the existence of purchasing dealer was doubted, whereas, in the instant case the purchasing dealers themselves were not

traceable, coupled to the fact that TIN numbers were also found to be incorrect. Thus, those judgments are distinguishable on its facts itself. This fact

stood established from the fact that the petitioner, for this reason, had restricted his challenge to the order of reassessment to the extent of only

penalty imposed. This court does not find any strong case made out by the petitioner warranting interference with the impugned orders.

18. The writ petition thus being devoid of merit deserves to be and is hereby rejected.