**(2011) 06 MAD CK 0066**

**In the Madras High Court**

**Case No :** Writ Petition (MD) No. 10875 of 2005

Periyar Poly Products APPELLANT

Vs

The Deputy Commercial Tax Officer RESPONDENT

**Date of Decision :** 23-06-2011

**Acts Referred:**
Central Sales Tax Act, 1956 — Section 10, 10(A), 7(2)

**Citation :** (2011) 06 MAD CK 0066

**Hon'ble Judges :** D. Hariparanthaman, J

**Bench :** Single Bench

**Advocate :** A. Chandrasekaran, for the Appellant; D. Muruganandam, Addl. Govt. Pleader, for the Respondent

**Final Decision :** Allowed

# Judgement

D. Hariparanthaman, J.—The Petitioner is a registered dealer under the Central Sales Tax Act, 1956. The Petitioner is a partnership firm.

The Petitioner have entered into an agreement with the Department on 24.05.1999 for interest free Sales Tax deferral scheme. As per the said

scheme, they are entitled to deferral of sales tax collected for the period from 16.09.1998 to 15.09.2003 and they should repay the same as per

the schedule commencing from 16.09.2003 to 15.09.2008 in installments. The Petitioner are repaying the deferral amount as per the schedule

without any default. They requested the Respondent by letters dated 14.05.2005, 29.08.2005 and 31.10.2005 to give them ''C'' Forms so as to

enable the Petitioner to send those ''C'' Forms to the sellers in other States for claiming concession rate from the concerned States. The

Respondents have not passed any orders on those representations. The Petitioner was not given the ''C'' Form, though they had made repeated representations. Hence, the Petitioner is constrained to file the present writ petition seeking for a direction to furnish declaration in ''C'' Forms as

requested by them in their letters dated 14.05.2005, 29.08.2005 and 31.10.2005 as per the decision reported in (2003) 131 STC 317 (City

Tower Hotels (P) Ltd., v. s. Commercial Tax Officer and Ors.).

2. This Court after notice passed an interim direction in W.P.M.P. No. 11603 of 2005 in W.P. No. 10875 of 2005, directing the Respondents to

issue 5 numbers of ''C'' Form declaration, within a period of one week as an interim measure.

3. The Respondent filed counter affidavit. The contentions made in the counter affidavit are that there is a change in the constitution of the Petitioner

partnership firm and therefore, they have to pay the loan availed under the interest free Sales Tax deferral scheme in one lumpsum with interest

instead of adhering to the schedule. This is the only reason for not furnishing ''C'' Forms.

4. The learned Counsel for the Petitioner submits that the change in the constitution of the partnership firm could not be a reason to withdraw the

benefit that the Petitioner is enjoying under the interest free Sales Tax deferral scheme. The partnership firm as such entered into an agreement with

the department and pursuant to the agreement the Petitioner utilised the interest free Sales Tax deferral scheme from 16.09.1998 to 15.09.2003

and they should repay the collected amount commencing from 16.09.2003 to 15.09.2008 in installments as per the schedule. Since the agreement

was entered into by the Firm, the change in one or two of the partners and the induction of new partners could not make any alteration in the

agreement. In any event, no default is committed by the Petitioner Firm. It is further submitted by the Petitioner counsel that even if there is a

default, the Respondent can proceed against them and they could not deny ''C'' Form which they are entitled to under the Statute. it is further

submitted that the Department/the Respondent so far has not passed any orders cancelling the agreement or the eligibility certificate issued under

the agreement dated 24.05.1999. The Petitioner heavily relies on the decision reported in (2003) 131 STC 317 (cited supra).

5. On the other hand, the learned Additional Government Pleader strenuously contended that the Petitioner would not get the ''C'' Form in view of

 

the change in the Constitution of the partnership firm and he seeks dismissal of the writ petition.

6. I have considered the submissions made on either side. It is not in dispute that the Petitioner is a registered dealer under the Central Sales Tax

Act, 1956 and the Petitioner is also a dealer under the Tamil Nadu General Sales Act. As rightly contended by the learned Counsel for the

Petitioner, the Petitioner is a partnership firm that entered into an agreement on 24.05.1999 for interest free Sales Tax deferral scheme. As per the

scheme they were permitted to retain the sales tax collected during the period from 16.09.1998 to 15.05.1993 and the repayment schedule

commenced from 16.09.2003 and the last repayment would be on 15.09.2008. The Petitioner has been adhering to the schedule and making the

loan repayment without any default. Furthermore, the eligibility certificate issued under the aforesaid agreement by the department is not cancelled.

Therefore, I am of the considered view that the submissions of the learned Counsel for the Petitioner has much force.

In any event, as rightly submitted by the learned Counsel for the Petitioner, a change of constitution of partnership firm or even any default under

the interest free Sales Tax deferral scheme, could not give any power to the Respondents to deny the statutory form, which the Petitioner is entitled

to get it so as to pass on the seller for availing concession rate in the concerned State. Otherwise, that would cause serious prejudice in their

business activities.

7. In my view, the judgment relied on by the learned Counsel for the Petitioner squarely applies to the facts of the case also. Paragraphs 5 to 11 of

the said judgment is extracted hereunder:

5. In Nambiar v. State of Madras (W.P. Nos. 1379 and 1380 of 1967 and 840 of 1971), a division Bench of this Court by order dated April 27,

1971 observed as follows:

..... There is no provision in the Act which authorised the Commercial Tax Officer to refuse to provide the Assessee with C forms. If the Assessee

misused the C form, that will be punishable u/s 10 of the Central Act.

Beyond that, it had no effect, not even in tax. The Commercial Tax Officer was not constituted as a policeman to regulate and conduct the

Assessee along with virtuous path. If the Assessee had registered himself under the provisions of the Central Act, he was, as a matter of right,

entitled to get C forms from the officer, who had no authority to refuse the same....

6. The aforesaid decision was followed in the subsequent decision reported in (1986) 61 STC (Mad.) (Chanda Paints (Madras) Ltd. V.

Commercial Tax Officer, Royapettah Assessment Circle, Madras-5).

7. In (1998) 109 STC 625 (A) (A.P. Gas Power Corporation Ltd. v. Assistant Commercial Tax Officer) after referring to relevant provisions, it

was observed:

Thus from the reading of the above provisions it is clear that at the stage of issuing of ''C'' declaration form, the notified authority is not required to

conduct an enquiry into the nature of the transaction and as to whether the Petitioner needs the forms for use in the course of inter-State trade or

for avoidance of payment of tax which he would be liable to pay. The authorities will, however, be at liberty to make such an enquiry as it is

necessary to see

7 whether C forms have been properly issued and if not what is the liability of the parties under the APGST or CST Act, as the case may be. Such

an enquiry need not be made at the stage of issuance of C form. What all is required under Rule 9 of the said Rules is:

(1) Whether the person applied for C form is a registered dealer;

(2) Whether the goods in respect of which C form is used are included in the certificate of registration form ""A""; and (3) Whether he has paid the

amount for the C form and produced necessary challan in proof of the payment;

When these requirements are satisfied, C form has to be issued.

8. In (1992) 85 STC 422 (Mad.) (Larsen & Toubro Limited v. Commercial Tax Officer) it was observed as follows:

... in my view, the Petitioners are entitled to have themselves registered as dealers u/s 7(2) and consequently are entitled to the supply of ''C'' forms

for use in their purchase of goods in the course of inter-State sale or trade or commerce at the confessional rate. The further question whether the

goods have been rightly purchased for any one of the approved and permitted purposes and whether there was sufficient compliance or non-

compliance or violation of the terms of the registration certificate or as to whether the ''C'' forms issued have been misused by the registered dealer

shall be considered only at the subsequent and appropriate stage and in accordance with Section 10-A of the Central Sales Tax Act and it would

be not only premature but inappropriate to enter into an enquiry postulated u/s 10-A even at the stage of issue or the supply of ''C'' forms.

9. Following many of these aforesaid decisions, in Quality Enterprises, Kamaraj Salai, Saram, Pondicherry Vs. The Additional Deputy

Commercial Tax Officer-I, Pondicherry, , it was observed:

8. From the decisions of this Court and the Supreme Court, it is clear that for issuance of ''C'' forms, the only conditions that are to be satisfied are

that the person

8 claiming ''C'' form is a registered dealer and that the charges for ''C'' form were paid and that he produced the challans in proof of having paid

the amount for obtaining the ''C'' form. Once these conditions are satisfied, the authorised are bound to issue ''C'' form. Whether the ''C'' forms are

properly used or misused, cannot be enquired into at the initial stage of issuance of ''C'' forms. If any person misused the ''C'' form, he is liable to

the penalties as contemplated under the Act. Therefore, the authorities which issue ''C'' forms have to issue the forms, once they satisfy the above

conditions. Therefore, the rejection of the request by the Respondent is not justifiable. Under the relevant provisions of law, the Petitioner is

entitled for 25 ''C'' forms, at a time. The Petitioner is entitled to get the forms, in accordance with that Rule 15(2).

10. A reading of the aforesaid decisions would amply make it clear that mere apprehension that a person applying for ''C'' forms is likely to misuse

such ""C"" is never considered as a ground for rejection of the application. In the subsequent letters, the Petitioner had referred to the above decision

and yet no action has been taken by the authorities.

11. For the aforesaid reasons, the writ petition is allowed and the first Respondent is directed to deal with the letter of request dated September

18, 2002 and pass necessary orders in accordance with law, particularly keeping view the observation made in various decisions referred to

above, within a period of seven days from the date of communication of this order. Even if the obdurate attitude of the Respondents calls for

imposition of cost. I desist from doing so. Consequently, W.P.M.P. No. 9544 of

 

2003 is closed.

8. In these circumstances, I direct the Respondents to pass appropriate orders on the request request made by the Petitioner in their

9 letters dated 14.05.2005, 29.08.2005 and 31.10.2005 for issuance of ''C'' form declaration as per the principle enunciated in the afore-said

judgment reported in (2 0 0 3) 1 3 1 ST C 317 (cited supra), within a period of two weeks from the date of receipt of a copy of this order. The

writ petition is ordered in the above terms. No costs.

 