(2011) 05 GAU CK 0001

In the Gauhati High Court

Case No : Writ Petition (C) No. 210 of 2011

S.R. DAS and Sons — APPELLANT

Vs

State of Tripura and Others — RESPONDENT

Date of Decision : 31-05-2011

Acts Referred:
Central Sales Tax Act, 1956 — Section 6A, 7, 7(3A)

Citation : (2012) 47 VST 298

Hon'ble Judges : Utpalendu Bikas Saha, J

Bench : Single Bench

Advocate : A.K. Saraf, Assisted by B.N. Majumder, Ms. S. Datta, A.K. Sharma and A Goyal, for the Appellant; N.C. Pal, Government Advocate, for the Respondent

Judgement

U.B. Saha, J.—The instant writ petition is filed by the petitioner, a proprietorship-firm, to quash the order dated February 5, 2011, passed by the Superintendent of Taxes, Charge VI, respondent No. 3 herein, whereby the prayer of the petitioner for issuance of the form F was rejected stating, inter alia, that the petitioner-firm is not entitled to carry business in form F to get any benefit under the provisions of section 6A of the Central Sales Tax Act, 1956 in respect of exemption of payment of tax, and also for a direction to the State respondents, the sale tax authority, to issue form F to the petitioner. Heard Dr. A.K. Saraf, learned senior counsel assisted by Mr. B.N. Majumder, Mr. A.K. Sharma and Mr. A. Goyal, learned counsel for the petitioner. Also heard Mr. N.C. Pal, learned Government Advocate appearing for the State respondents.

2. Dr. Saraf while urging for the relief sought for would contend that the present petitioner is acting as an agent of a dealer registered under the CST Act outside the State of Tripura and wants to transfer the stock of the goods in question from the said dealer for selling the same in the State of Tripura and accordingly has prayed for issuance of form F to the sales tax authority, but the sales tax authority rejected the said prayer of the petitioner on the ground that the

principal company has not been registered within the State of Tripura which cannot be a ground for rejection in view of the decision in R.H. Enterprises and Others Vs. Commissioner of Sales Tax and Others, wherein a Division Bench of the Delhi High Court while considering the provisions of section 6A of the Central Sales Tax Act stated, inter alia, that according to the provisions of section 6A of the Central Sales Tax Act, the petitioner is obliged to furnish to his principal form F which would signify that he is receiving those goods on transfer. This form F is issued under rule 4C of the Central Sales Tax (Delhi) Rules, 1957. It has also been noted that neither of the provisions of the Central Sales Tax Act or Rules framed thereunder empowers the sales tax authority to refuse the issue of F forms. The sales tax authorities are concerned with the safeguarding of the revenue under the Act. The Central Sales Tax Act is distinct and separate from the Delhi Sales Tax Act. Merely because it is the officers appointed under the Delhi Sales Tax Act who administer the provisions of the Central Sales Tax Act, would not empower those officers to take recourse to the provisions of the Delhi Sales Tax Act for the purpose of passing an order relating to the Central Sales Tax Act and ultimately taking note of entire facts of this case, the respondent-sales tax authorities were directed to provide the remaining number of form F which were not issued.

3. In his usual fairness, Dr. Saraf further submits, there is no doubt that when a person purchased goods from another State for selling the same in the State where he is registered under the CST Act is not entitled to get the benefit of section 6A and also form F, but obviously when he is transferring the stock from principal company as an agent then the sales tax authorities are not empowered to refuse the issuance of the form F, at best they can ask for security as required u/s 7(3A) of the CST Act.

4. In the instant case, the present petitioner has already deposited the security as required under the provisions of law. However, if the sales tax authorities are of the opinion that additional security deposit is required, then also the petitioner is ready for depositing the same, Dr. Saraf submits.

5. While resisting the submission of Dr. Saraf, Mr. N.C. Pal, learned Government Advocate, placed the relevant file to show that the petitioner in his application prayed for issuance of 50 Nos. of form F stating, inter alia, that the petitioner needs the form F for purchasing of goods from outside State and selling the same within the State of Tripura which was received by the sales tax authorities on November 10, 2010 and according to Mr. Pal, when a dealer wants to purchase some goods from another State for selling the same in the State of Tripura, he is not entitled to get form F as the same does not cover by the provisions of section 6A of the CST Act. In support of his aforesaid contention, he placed relevant application which has been perused by this court and the same has also been shown to Dr. Saraf.

6. Dr. Saraf on perusal of the same has submitted that the petitioner is not aware about the provisions of law and probably considered that stock transfer

also comes within the provision of sale.

7. This court has also gone through the judgment of the Delhi High Court in R.H. Enterprises and Others Vs. Commissioner of Sales Tax and Others, . The fact of that case is totally different than the case in hand. In that case, the petitioner himself was registered under the Central Sales Tax Act, 1956 and it received goods on transfer from his principal who was outside Delhi and the petitioner was initially provided a few F form, i.e., 9 F forms though the petitioner had requested for 34 nos. of F form, on the ground that there has been large amount of local sales tax which is outstanding against the petitioner. Therefore, the aforesaid case cannot be taken up as precedent. However, so far as the submission of Dr. Saraf regarding the entitlement of form F by an agent while transferring the stock of principal staying at outside State has some force. But the application preferred by the petitioner seeking form F is not supporting the contention of Mr. Saraf, as in the said application the petitioner specifically stated that he needs the form F for purchase of goods from outside State for selling the same in the State of Tripura. However, in the interest of justice, notice can be issued and no interim order can be passed at this stage.

8. Accordingly, let a notice of motion be issued to the respondents.

9. As Mr. Pal appears and accepts notice for and on behalf of the respondents, no formal notice is called for.

10. At this stage, Dr. Saraf further contends that as from the application of the petitioner it appears that the petitioner wants to purchase goods from outside State for selling the same in the State of Tripura and also wants to have form F for utilizing the same for the said purpose, the matter can be closed with an observation that if an agent, a registered dealer u/s 7 of the Central Sales Tax Act, applied for issuance of form F for transferring the stock from his principal staying at the outside State, the sales tax authority should consider it in accordance with law and they should not ask for registration of the principal in the State of Tripura being the principal has already been registered in other State u/s 7 of the Central Sales Tax Act.

11. This court is of further opinion that the aforesaid submission of Mr. Saraf has some force. Therefore, when an agent would make an application seeking issuance of form F, then the sale tax authority should first enquire whether he is going to transfer the goods from his principal or purchasing goods for sale. If the petitioner agent asks for transferring stock from his principal, then the authority should issue form F taking note of sub-section (3) of section 7 of the Act and other relevant provisions of the said Act.

12. In view of the above, rejection of the prayer of the petitioner for issuance of form F is not required to be interfered with and accordingly the same is not interfered with. With the aforesaid observation, the writ petition is disposed of.