(2015) 02 MAD CK 0132

In the Madras High Court

Case No : Writ Petition Nos. 3110 to 3112 of 2015 and M.P. No. 1 of 2015

Sree Kumar Engineering Works APPELLANT

Vs

The Assistant Commissioner (CT) RESPONDENT

Date of Decision : 09-02-2015

Acts Referred:

Citation : (2015) 02 MAD CK 0132

Hon'ble Judges : S. Vaidyanathan, J.

Bench : Single Bench

Advocate : V. Srikanth, for the Appellant; Manoharan Sundaram, Addl. G.P., Advocates for the Respondent

Judgement

S. Vaidyanathan, J.—The petitioner has come forward with these Writ Petitions praying for issuance of Writs of Certiorari to call for the records on the files of the respondent in CST.947431/2009-10, CST.947431/2010-11 and CST.947431/2011-12, all dated 17.11.2014, received on 03.01.2015 and quash the same as being arbitrary, invalid and illegal.

2. The case of the petitioner-Company is that they are dealers in magnesite powder, which is taxable under the provisions of the Tamil Nadu Value Added Tax Act. The petitioner has already handed over ''C'' Form in original relating to the turnover to the concerned Commercial Tax Officer who was working under the respondent at the relevant point of time and also paid the necessary tax. It is their further contention that they have already filed ''C'' Form in original, for which necessary acknowledgement has also been given by the concerned officer of the respondent. It is stated by the petitioner that when they received the notice dated 05.09.2014, they have paid the tax with ''C'' Form, as seen from the reply, dated 09.09.2014 filed by the petitioner before the respondent. The averment of the respondent that they have not received the ''C'' Form in original, is not correct. Without considering the objections of the petitioner, the respondent has passed the impugned orders, stating that ''C'' Form had not been filed by the petitioner and it is stated in the impugned orders that on verification

by the respondent, it was noticed that ''C'' Form as contended by the petitioner-dealer, is not available and it is further observed by the respondent that it is clear that they have not filed ''C'' Form in their office and the respondent over-ruled the objections of the petitioners and confirmed the proposal of reversion of the input tax credit while verifying the assessment and also levied tax. It is the further case of the petitioner that the respondent may accept the duplicate copy of ''C'' Form.

3. While refuting the above contentions of the petitioner, learned Additional Government Pleader appearing for the respondent drew the attention of this Court to Rule 12(2) of the Central Sales Tax (Registration and Turnover) Rules and submitted that when ''C'' Form declaration is lost, it is open for the petitioner to furnish indemnity bond in Form-G to the Notified Authority. He further submitted that when the provision is very clear, the petitioner cannot seek for acceptance of the duplicate copy of ''C'' Form.

4. In reply, learned counsel for the petitioner drew the attention of this Court to Rule 10(2) of the Central Sales Tax (Tamil Nadu) Rules and stated that it is open for the petitioner-dealer to file duplicate copy of ''C'' Form relating to the relevant year at any time before the final assessment of the accounts of that year and the contention of the respondent that the petitioner will have to produce the indemnity bond, is not correct, more particularly, when the officer of the respondent received ''C'' Form in original and also made an endorsement for all the relevant assessment years.

5. Heard both sides and perused the materials available on record.

6. It is relevant to extract Rule 12(2) of the Central Sales Tax (Registration and Turnover) Rules and Rule 10(2) of the Central Sales Tax (Tamil Nadu) Rules, as follows:

"Rule 12(2) of the Central Sales Tax (Registration and Turnover) Rules:

(2) Where a blank or duly completed Form of declaration is lost, whether such loss occurs while it is in the custody of the purchasing dealer or in transit to the selling dealer, the purchasing dealer shall furnish in respect of every such Form so lost an indemnity bond in Form G to the Notified Authority from whom the said Form was obtained for such sum as the said authority may, having regard to the circumstances of the case, fix. Such indemnity bond shall be furnished by the selling dealer to the Notified Authority of his State if a duly completed Form of declaration received by him is lost, whether such loss occurs while it is in his custody or while it is in transit to the Notified Authority of his State:

Provided that where more than one Form of declaration is lost, the purchasing dealer or the selling dealer, as the case may be, may furnish one such indemnity bond to cover all the Forms of declarations so lost." "Rule 10(2) of the Central Sales Tax (Tamil Nadu) Rules:

(2) A registered dealer who claims to have made a sale to another registered

dealer shall in respect of such claim, attach to his return in Form 1 the portion marked ''Original'' of the declaration received by him from the purchasing dealer; or duplicate of such declaration / Certificate where the original has been lost. The assessing authority may in his discretion also direct the selling dealer to produce for inspection the portion of the declaration / Certificate marked ''Duplicate''.

Notwithstanding anything contained in the foregoing paragraph and in Rule 5, the selling dealer may, instead of attaching the Form of declaration / Certificate to the return in Form 1 keep it in his custody subject to the condition that he submits all the Forms of declaration / Certificate relating to the year at any time before the final assessment of the accounts of that year."

7. From a reading of the above extracted Rule 10(2) of the Central Sales Tax (Tamil Nadu) Rules, it is clear that the petitioner is entitled to file Form of Declaration / Certificate relating to the year at any time before the final assessment of the accounts of that year. In this case, the petitioner has filed ''C'' Form in original before the authority of the respondent and an endorsement has also been made by the concerned officer. The contention of the respondent relying upon Rule 12(2) of the Central Sales Tax (Registration and Turnover) Rules, by requiring the petitioner to produce the indemnity bond, cannot be accepted, as the same would be applicable only in case the petitioner had lost the original ''C'' Form. The respondent in this case shall accept the duplicate copy of the ''C'' Form already filed before them by the petitioner. When the said document filed by the petitioner before the respondent-authority had been misplaced by the respondent-Department, insisting of Declaration by means of indemnity bond, is not correct and there is no duty cast upon the petitioner to file the indemnity bond, when the petitioner has not lost the original of the same and when the petitioner has also not requested by stating that they have misplaced the original document. Admittedly, both the parties admit that the receipt will be in-triplicate and the seller will retain a copy and furnish the original with the Department. It is further stated that the duplicate copy will be given to the petitioner and the petitioner will retain the duplicate copy and produce the original before the authority concerned. When the authority has misplaced the original of the document for whatever be the reason, there is no hard and fast rule to deny the request of the petitioner for accepting the duplicate copy of the document, which is available with the petitioner.

8. Hence, for the foregoing reasons, the impugned orders are set aside and the matters are remitted back to the respondent for considering afresh and for passing appropriate orders on merits and in accordance with law. The petitioner is permitted to file the duplicate copy of ''C'' Form available with them before the respondent and get necessary acknowledgement from the respondent for producing the same in the photocopy of the duplicate copy of the ''C'' Form and the respondent shall not insist on the indemnity bond from the petitioner. The duplicate copy of ''C'' Form to be submitted by the petitioner, shall be accepted by the authority concerned of the respondent and the concerned authority shall

decide the issue afresh in accordance with law. It is open for the authority to decide the matter afresh, not being influenced by the impugned orders which have now been set aside by this Court. It is open for the petitioner to appear before the concerned authority of the respondent on 06.03.2015 and before that date, it is open for the petitioner to furnish necessary duplicate copy of ''C'' Form as required by the authority.

9. The Writ Petitions are disposed of with the above observations and directions. No costs. The Miscellaneous Petitions are closed.

