(1998) 04 CAL CK 0039

In the Calcutta High Court

Case No : W.P.T.T. No. 2 of 1998

Thomas Duff and Co. (India) P. Ltd.	APPELLANT
Vs	
Commercial Tax Officer, Lyons Range Charge and Others	RESPONDENT

Date of Decision : 30-04-1998

Acts Referred:
Bengal Finance (Sales Tax) Rules, 1941 — Rule 27A(9)

Citation : (2003) 133 STC 292

Hon'ble Judges : Ronojit Kumar Mitra, J;Bhagabati Prosad Banerjee, J

Bench : Division Bench

Advocate : Bose, for the Appellant;

Final Decision : Allowed

Judgement

1. The petitioner moved this application against the order of the Tribunal dated February 11, 1998. The only question involved in this case is whether the declaration form which was obtained by the petitioner from M/s. Indian Potash Ltd. at a belated stage could be taken for consideration for the purpose of granting exemption or concession under the provisions of Rule 27A(9) of the Bengal Finance (Sales Tax) Act, 1941. Admittedly, at the time of assessment, the petitioner could not produce such declaration form for exemption on account of sale to a registered dealer. M/s. Indian Potash Ltd., is a registered dealer and M/s. Indian Potash Ltd., was not given the declaration form. Therefore, at the time of assessment, the petitioner could not produce the declaration form which was later produced by the petitioner before the Board but the same was not accepted on the ground that the declaration form could not be admitted at the belated stage. Admittedly, in the instant case the petitioner could not give any sufficient cause for the purpose of non-production of declaration form in time. It is clear that the sales tax authorities of M/s. Indian Potash Ltd., withheld to issue declaration forms to it as a result of which M/s, Indian Potash Ltd., filed a writ application before this Honourable Court and by an order dated September 26, 1989, passed in C.O. No. 6212(W) of 1987 this Court passed an order for issue

of declaration forms in accordance with law in favour of M/s. Indian Potash Ltd. Against the said order passed by the learned single Judge of this Court, the Revenue preferred an appeal but no relief was obtained, and after the Revenue failed to get any relief in the appeal, ultimately the declaration form was given. Consequently, the petitioner produced the declaration forms before the Revenue explaining the difficulties faced by the petitioner in obtaining the said declaration forms but the Revenue rejected the same on the ground that it was not produced at the relevant time and there was no sufficient explanation for such non-production. In view of the above, delay also occurred on the part of the petitioner to produce the declaration forms before the Revenue. In the instant case, the Revenue withheld issuance of declaration forms to M/s. Indian Potash Ltd., and accordingly M/s. Indian Potash Ltd., could not handover the declaration form to the petitioner. Against the order of the learned single Judge, Revenue preferred an appeal and in view of the order passed by this Court M/s. Indian Potash Ltd., had to be given declaration form by the Revenue. The contention of the Revenue, viz., filing of declaration form at a subsequent and belated stage cannot be accepted in the instant case since it is the Revenue who had caused the delay and the Revenue is responsible for bringing about such a situation for which the petitioner could not produce the declaration forms at the relevant time, and if such delay is taken into account, the same will cause serious injustice to the petitioner and penalise the dealer for no fault of its own.

2. Mr. Bose, the learned counsel appearing on behalf of the petitioner drew our attention to the decision of this Court reported in [1975] 36 STC 582 (Mohatta Brothers v. Additional Member, Board of Revenue), wherein their Lordships considering this aspect of the matter held that a dealer is entitled to file declaration forms along with the petition of appeal and the officer is empowered to accept and consider those declaration forms, and accordingly, we are of the view that it is not a case where there was lapses and negligence on the part of the petitioner in producing the declaration forms and/or there was no sufficient cause or explanation for non-production of declaration forms, but it was a case for withholding of declaration forms by the Revenue in favour of M/s. Indian Potash Ltd., and ultimately when declaration forms were obtained by M/s. Indian Potash Ltd., the same were handed over to the petitioner who produced the same before the Revenue for the purpose of getting concessional rate.

3. In our view, the Revenue is bound to accept such form as valid. If the declaration forms are not allowed to be admitted, in that event, it would result in Revenue being unjustly enriched because of the lapses on their part and the same cannot be said to be the spirit and purpose of the law. If the petitioner was at fault, he was to suffer, but if there was a default on the part of the Revenue, the Revenue cannot take advantage of its own fault. While interpreting the provisions of the statute, the court must hold that provision of a statute produces a practicable result and not anomalous and it could not be allowed to produce a disproportionate counter-mischief. When the Revenue had issued the declaration forms in terms of an order of court, the decision taken by it to refuse to accept

the declaration forms because the period for such submission is over, is not at all acceptable because the same would cause serious injustice to the petitioner and penalise a dealer for no fault of its own. This will bring about a situation where a dealer has to suffer.

4. Considering the very object and spirit of the Act, the Revenue cannot take any action which is contrary to the provisions of law. As soon as the purchase is made by a registered dealer, the registered dealer is entitled to get a declaration form.

5. Accordingly, the order of the Tribunal and the Board is set aside. The respondent No. 1 is directed to admit the declaration forms and allow exemption and/or concession after the declaration forms are found to be correct and complete and valid, and such concession and/or exemption should be done within a period of 10 weeks from the date of communication of this order.

6. The application is thus disposed of without any order as to costs.

7. All parties are to act on the xerox copy of this dictated order on the usual undertaking.

