(2014) 03 AP CK 0197

In the Andhra Pradesh High Court

Case No : Writ Petition No. 39097 of 2013

Victory Transformers and Switchgears Limited APPELLANT

Vs

Commercial Tax Officer RESPONDENT

Date of Decision : 12-03-2014

Acts Referred:
Central Sales Tax Act, 1956 — Section 8(1), 8(1)(b)
Constitution of India, 1950 — Article 226

Citation : (2014) 58 APSTJ 102

Hon'ble Judges : M. Satyanarayana Murthy, J;Ashutosh Mohunta, J

Bench : Division Bench

Advocate : S. Dwarakanath, Advocate for the Appellant; P. Balaji Varma, Special Standing Counsel, Advocate for the Respondent

Judgement

M. Satyanarayana Murthy, J.—M/s. Victory Transformer and Switchgears Limited filed this writ petition, under Article 226 of the Constitution of India, seeking a direction by way of writ of Certiorari and to quash the proceedings of the 2nd respondent in CCT''s Ref. No. AII(3)/136/2013, dated 30.11.2013 as illegal, arbitrary without jurisdiction, contrary to law and direct the respondents-authorities to remove the blockage status for issue of statutory ''C'' declaration forms online and consequently, direct the 1st respondent to issue statutory ''C'' declaration forms as requested by the petitioner in it''s application dated 09.05.2013, without insisting for payment of alleged arrears of tax. The petitioner is a registered dealer under the Andhra Pradesh Value Added Tax Act, 2005, (For short, ''the Act'') with TIN No. 28150191247 and also holding a registration under Central Sales Tax Act, 1956 (For short, ''the C.S.T. Act''). The petitioner purchased various components required for manufacturing of transformers from various sellers in other states. Under the scheme of C.S.T. Act, the petitioner is entitled to issue ''C'' declaration forms to sellers in other States, who can avail concessional rate of 2% under Section 8(1) of the C.S.T. Act, provided the petitioner furnishes ''C'' declaration forms prescribed under the Act which are mandatory to enable the seller to avail the concessional rate. The petitioner being a registered dealer under C.S.T. Act is entitled to purchase goods used for manufacture of transformers under Section 8(1)(b) of the C.S.T. Act.

2. As per the procedure, the petitioner has to make a request for ''C'' declaration forms by applying online in the departmental website ''www.apct.gov.in'' or by applying at the e-Dealer Service Centre (eDSC). The petitioner, accordingly, made an application before eDSC on 09.05.2013. Required statements in the CD and invoices of the suppliers were also furnished by obtaining ''C'' declaration forms, but request of the petitioner was rejected by ''eDSC'' with the following endorsement:

"Blocked dealer - contact Commercial Tax Officer concerned".

Thereupon the petitioner made several attempts to obtain ''C'' declaration forms but could not; the 1st respondent did not issue ''C'' declaration forms on the ground that the petitioner is in arrears of tax though an Appeal bearing No. 16 of 2012 is pending on the file of Sales Tax Appellate Tribunal. Thus, the action of the respondents is illegal.

3. Heard arguments of both the counsel, at length, at the stage of admission itself.

4. Learned counsel for the petitioner reiterated the contentions raised in the writ petition while learned Special Government Pleader disputed the same on the ground that unless the tax arrears is cleared, ''C'' declaration forms cannot be issued.

5. In this case the controversy is with regard to non issuance of ''C'' declaration forms by the 1st respondent, admittedly, on the ground that the petitioner is in arrears of VAT tax and an appeal is pending. When ''C'' declaration forms are denied, the present writ petition is filed.

6. Indisputably, interstate transactions covered by a certificate in Form-C, issued under Rule 9 of the Central Sales Tax Rules, 1957, entitles the assessee to claim confessional rate of tax. The petitioner, therefore, applied for ''C'' declaration forms to certify the sales under which they purchased from various suppliers. If ''C'' declaration forms are not issued, they shall be liable to pay tax without availing concession. The question, therefore, is when a purchaser is in arrears of tax to the State of Andhra Pradesh, can he be denied the ''C'' declaration forms to enable the dealer to certify the sales? The issue appears to be no more res integra.

7. In Sri Kamadhenu Khadi and Village Industries Welfare Society, Kolluru v. Commercial Tax Officer, Tenali (1996) 23 APSTJ 141, a Division Bench of this Court considered the question whether it is competent to the Commercial Tax Officer to deny the way-bills to compel the payment of tax arrears? Answering the question in the negative, the Bench observed as under: "In as much as the issuance of the way bills depends upon the payment of cost; under Rule 45 of the Andhra Pradesh General Sales Tax Rules, 1957, payment of tax is not one of

the conditions prescribed in those Rules. Therefore, in our view, the defence taken by the respondent is untenable.

We may also point out here that in M/s. Dabur India Ltd. and Others Vs. State of Uttar Pradesh and others, , the Supreme Court observed that Government should not take extra-legal steps or manoeuvre to coerce citizens to make payment which they are not legally obliged to make. Relying on the observation of the Supreme Court, the learned counsel for the petitioner submits that as the petitioner is exempted from payment of tax, non-issuance of the way bills is illegal. We do not consider it necessary to go into the exemption of tax. In view of the above observations of the Supreme Court, even if any tax is due from the petitioner, denial of the way bills is not the proper way to recover the tax."

The learned Special Government Pleader has not brought to our notice any provision in the VAT Act or the C.S.T. Act, 1956, which empowers denial of ''C'' declaration forms to the petitioner. Thus, in view of the principles laid down by this Court in the decision cited supra, the writ petition is allowed directing the respondents to supply the ''C'' form declarations. However, this order does not preclude the respondents from initiating appropriate proceedings for recovery of tax arrears, if any.

In consequence, Miscellaneous Petitions, if any, pending in this petition, shall stand closed. No order as to costs.