

Neutral Citation Number is 2023:DHC:2605-DB

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 13th April, 2023

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W.P.(C) 6362/2019 & CM APPL. 27070/2019

INDO SILICON ELECTRONICS
PVT. LTD.

..... Petitioner

Through: Mr. Varun Nischal and Mr. Arif
Ahmed Khan, Advs.

versus

COMMISSIONER TRADE & TAXES
& ORS.

..... Respondents

Through: Mr. Satyakam, ASC with
Ms. Pallavi Singh, Adv. for R-1
to 3.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J. (Oral)

1. The petitioner has filed the present petition impugning the assessment order dated 29.03.2019 passed by respondent No. 3 (Assistant Value Added Tax Officer) for the third quarter of the Financial Year 2014-15.

2. The petitioner is aggrieved by the said assessment order to the extent that respondent No. 3 has framed a default assessment on the basis that the C Forms relied upon by the petitioner, were subsequently cancelled by the Rajasthan Tax Authority.

3. Respondent No. 3 had reasoned that since C Forms had been cancelled by the Tax Authority that issued it, no benefit of such C Forms could be availed by the petitioner.

4. The only question that falls for consideration of this Court is whether respondent No. 3 is justified in denying the benefit of C Forms to the petitioner that were issued by the Rajasthan Tax Authorities at the instance of the selling dealer located in the said State.

5. Undisputedly, the selling dealer who had furnished the C Forms was registered with the Rajasthan Tax Authorities in respect of the goods purchased by the petitioner at the material time.

6. The question whether any irregularity in the issuance of C Forms would preclude the assessee from benefits of the same, is no longer *res integra*.

7. In the case of ***State of Madras v. Radio Electrical Ltd. and Anr. : 1966 (18) STC 222 (SC)***, the Hon'ble Supreme Court had held that, where C Forms submitted by a purchasing dealer state that the goods were intended to be used for a particular purpose and the purchasing dealer misapplied the goods, the selling dealer was under no obligation to ensure that the goods were applied for the purposes as represented by the purchasing dealer. The Court held that the selling dealer was entitled to rely upon the C Forms submitted by the purchasing dealer for claiming exemption of concessional rate of tax.

8. The following observations of the Hon'ble Supreme Court are relevant:

“He (the seller) must satisfy himself that the purchaser is a registered dealer, and the goods purchased are specified in his certificate; but his duty extends no further. If he is satisfied on these two matters, on a representation made to him in the manner prescribed by the Rules and the representation is recorded in the certificate in Form 'C' the selling dealer is under no further obligation to see to the application of the goods for the purpose for which it was represented that the goods were intended to be used. If the purchasing dealer misapplies the goods he incurs a penalty under section 10. That penalty is incurred by the purchasing dealer and cannot be visited upon the selling dealer....”

9. In *M/s Pentex Sales Corporation v. Commissioner of Sales Tax, Delhi : ST. REF. 1/1998* decided on **06.05.2013**, this Court, following the decision in the case of *Radio Electrical Ltd. (supra)*, had held that once a selling dealer had complied with the requirement of verifying that the purchasing dealer is a registered dealer and holds the registration certificate in respect of goods sold to him, he had no further obligations and the benefit of the C Forms could not be denied. The only exception would be where the C Forms are forged; in which case the same would be required to be treated as non-existent.

10. The aforesaid decisions rest on the rationale that a dealer is entitled to rely on such forms as a part of its bargain if the dealer furnishing the forms is a registered dealer in respect of the goods in question. The dealer accepting the forms is not required to undertake any detailed investigation regarding whether the issuing dealer has complied with all laws. Any liability regarding non-compliance of the relevant laws would rest with the dealer furnishing such forms and not the dealer that accepts these forms.

11. In the present case, there is no dispute that the purchasing dealer was duly registered with the Rajasthan Tax Authorities in respect of the goods sold by the petitioner. There is also no dispute that the C Forms are genuine and had been issued by the concerned authority at the material time.

12. In this view, the benefit of the C Forms cannot be denied to the petitioner.

13. It is necessary to bear in mind that C Forms are an integral part of the consideration received by the selling dealer. The commercial bargain struck by dealers factors in the value of these forms. The

effect of denying the benefit of the C Forms would amount to rewriting a commercial transaction that has been consummated. The cancellation of C Forms at a subsequent date would have a disruptive effect on the stream of commercial transactions, which is impermissible.

14. This Court, in ***Jain Manufacturing (India) Pvt. Ltd. v. The Commissioner Value Added Tax & Anr. : W.P.(C) 1358/2016***, had held that cancellation of C Forms with retrospective effect is not permissible.

15. In the aforesaid view, the denial of the benefit of C Forms, on the ground that they have subsequently been cancelled, is not sustainable.

16. It is contended on behalf of the respondents that the tax authorities in National Capital Territory of Delhi have no control over the dealer who has furnished the C Forms or the tax authorities (Rajasthan Tax Authorities) which have cancelled the C Forms.

17. A similar contention was advanced on behalf of the Revenue in the case of ***Surinder Pal and Sons-HUF v. Value Added Tax Officer (Ward 57) Department of Trade & Taxes, Government of NCT of Delhi & Ors. : W.P.(C) 12142/2018*** dated 14.11.2018. This Court had rejected the contention that the benefits of the C Form would not be available to a dealer in such cases. The relevant observations of the Court are set out below:

“The Revenue’s argument that since it did not pass an order cancelling the C Form, like in *Jain Manufacturing* but rather that a third party, outside the jurisdiction of this court, did so, is unpersuasive. As long as the Central enactment is interpreted in a particular manner, by a High Court empowered to do so, the question of the authority, wherever it is located, possessing the power - to wit, the authority to

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cancel the C Form retrospectively - does not arise. The declaration of the court that the provisions of law - i.e. the Central Sales Tax Act or the Rules do not authorize the concerned authority (or the form issuing authority) to resort to cancellation retrospectively, is one in rem. If the Delhi VAT authorities are permitted to hair split and distinguish the source of its power as one exercised by an authority outside Delhi or that the C Form in the decision was issued by a purchasing dealer and not a selling dealer, the import of the decision would be completely undermined. Consequently, the submission of the counsel for the Delhi VAT authorities that the Haryana authorities had the power or somehow could retrospectively cancel the C Forms, is rejected. If it is stated that no power exists to cancel a C Form retrospectively, no authority at least in Delhi can give effect to such order.

For the above reasons, the impugned orders are hereby set aside and quashed. The respondents are hereby directed to grant an opportunity to the petitioner and complete the assessment in accordance with law having regard to the circumstances of this case, i.e. the supervening event of cancellation of C Form.

This writ petition is disposed of in the above terms.”

18. Concededly, the decision in the case of ***Surinder Pal and Sons-HUF*** (*supra*) covers the issue raised in the present petition.
19. Accordingly, the impugned order is set aside.
20. The present petition is allowed in the aforesaid terms. The pending application is also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

APRIL 13, 2023

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