

TAX INFO

Dated 26/12/2022

Latest update on GST Law: **Petitioner could not be denied the benefit of C Forms on the ground that the same have not been verified, or on the basis of the mismatch of the products as given in judgement by Delhi High Court.**

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Name of Petitioner	Mangalam Traders
Name of Respondent	Value Added Tax Officer
Authority	Delhi High Court
Date of Judgement	13.12.2022
Appeal No.	W.P.(C) No.10546/2021

Brief Facts of the Case Law:

The petitioner is a proprietorship concern and is engaged in the business of inter-State trading of cosmetics, toiletries, disinfectant, deodorants, drugs, medicines, fruit jams, insect repellents, mosquito coils, ready mix food items and washing soaps under the name and style of Mangalam Traders. The petitioner is a registered dealer under the DVAT Act and the CST Act, 1956 and filed quarterly returns for the fourth quarter of the Assessment Year 2016-2017 and the first quarter of the Assessment Year 2017-2018 on 01.06.2017 and 29.07.2017, respectively claiming concessional rate of tax in respect of inter-State sales on the strength of C Form. The petitioner claimed a refund of ₹ 53,93,100 and ₹ 24,47,850, respectively, against C forms. The petitioner's claim for refund was not processed and being aggrieved by the same, the petitioner filed writ petitions before this Court which were duly disposed of by this Court by a common order dated 30.10.2017, directing the Petitioner to file 'C' forms in physical form with the Authorities and thereafter the claim for refund can be processed by the Authorities within a period of 15 days. The petitioner furnished the physical forms, and the Department passed a refund order dated 11.12.2017 for the first quarter of the Assessment Year 2017-2018, wherein the refund amount of ₹ 20,86,966 was allowed after adjusting ₹ 3,60,884/- against the claim of refund of ₹ 24,47,850. The petitioner claims that although the said refund order has been passed but the same has not been credited in his account. Insofar as the refund of ₹ 53,93,100/- for the fourth quarter of the assessment year 2016-17 is concerned, the claim for refund was not processed. The Value Added Tax Officer (VATO) issued a notice of default assessment dated 11.04.2018 for the period in question and held that C Forms, furnished by the petitioner, related to another product and some of the C Forms could not be verified. Thus, the VATO held that inter-State sales made by the petitioner may be treated as central sales without valid C Forms. Accordingly, VATO raised a demand of additional tax along with interest. The petitioner sought review of the said orders, on the ground that the petitioner could not be held responsible for any mismatch in the C Forms issued by the purchasing dealers. The petitioner relied on the decision of **the Supreme Court in State of Madras v. M/s Radio and Electrical Ltd & Anr.: AIR 1967 SC 234**. However, the said application was rejected. The petitioner appealed the assessment order dated 11.04.2018 before the Objection Hearing Authority (OHA) but the same was disposed of by an order dated 18.07.2019 by remanding back the matter to the assessing authority with the direction that the assessing authority shall pass a well-reasoned and speaking order after affording the petitioner an opportunity to be heard. Thereafter, the concerned VATO issued notices under Section 59(2) of the DVAT Act and passed the impugned assessment orders dated 29.08.2020. A plain reading of the impugned orders indicates that they are substantially in similar terms as the order dated 11.04.2018 indicating that the benefit of C Forms has been denied to the petitioner in respect of certain inter-State sales on the ground that the C Forms could not be verified. The concerned VATO had noted that whereas the petitioner deals with kirana items – 'soap and detergents, cosmetics/shampoo/hair oils and tooth brush/paste/powder etc' – the concerned authorities of Rajasthan have confirmed that the C Forms have been issued in respect of different items such as gitti, grit & cotton seed cake.

Contention of the Petitioner:

There is no dispute that the purchasing dealers (dealers to whom the petitioner had sold goods such as shampoo, hair oils and soap etc.) were registered dealers in respect of those items. The petitioner had also illustratively referred to the registration certificate of one purchasing dealer, M/s Khatu Shyam Trading Company, which indicates that he is a registered dealer for re-sale of “Khanda, Gitty, Boldar, Dust, Morum, G.S.B., Bricks, Bath Soap, Shampoo, Detergent Powder, Kirana Goods, and All HUL Product. Even the Department did not dispute that the C Forms, produced by the petitioner, were issued by the registered dealer holding valid registration certificates in respect of the goods sold by the petitioner. There is also no allegation that any of the C Forms produced by the petitioner are forged or fabricated.

Findings and Decision of the Court:

The principal question to be addressed is whether the petitioner could be denied the benefit of the C Forms on the ground that the same have not been verified, or on the basis of the mismatch of the products. The said issue is covered by **the decision of the Supreme Court in State of Madras v. M/s Radio and Electrical Ltd & Anr. (supra)**. The relevant extract of the said decision reads as under: -“Indisputably the seller can have no control over the purchaser, He has to rely upon the representations made to him. He 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. The selling dealer is under the Act authorised to collect from the purchasing dealer the amount payable by him as tax on the transaction, and he can collect that amount only in the light of the declaration mentioned in the certificate in Form C. He cannot hold an enquiry whether the notified authority who issued the certificate of registration acted properly, or ascertain whether the purchaser, notwithstanding the declaration, was likely to use the goods for a purpose other than the purpose mentioned in the certificate in Form "C" There is nothing in the Act or the Rules that for infraction of the law committed by the purchasing dealer by misapplication of the goods after he purchased them, or for any fraudulent misrepresentation by him, penalty may be visited upon the selling dealer.”

In *Pentex Sales Corporation v. Commissioner of Sales Tax*, this court had referred to the decision in the case of *State of Madras v. M/s Radio and Electrical Ltd & Anr. (supra)* and held that the dealer claiming the benefit of ST-I Form was required to verify that the purchasing dealer was a registered dealer and holds a registration certificate in respect of the said goods sold to him. Once the said dealer had complied with the same, his duty did not extend any further. It is not expected that the registered dealer is to conduct the investigation as to how the purchasing dealer has obtained the C Form. If the purchasing dealer is a registered dealer in respect of the goods dealt with and the C Forms furnished are genuine, the selling dealer can accept the same without further enquiry.

In the present case, there is no dispute that the purchasing dealers are duly registered with the concerned authority as the registered dealers. Their registration certificates also indicate that they are registered in respect of the goods sold by the petitioner. There is no dispute that the petitioner had produced invoices and other material to establish that he had sold the concerned goods to the purchasing dealers. Under the scheme of taxation, the point of further taxation shifts to the purchasing dealer and the tax on the goods in question have to be recovered from those dealers. Thus, the impugned order was set aside and the Department was directed to process the petitioner’s claim for refund in accordance with law as expeditiously as possible.

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