

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE**

Present :- Hon'ble Mr. Justice Md. Nizamuddin

WPO 44 of 2013

Maco Corporation (India) Pvt. Ltd.

Vs

Asst. Comm. of Commercial Taxes, Corporate Division & Ors.

For the Petitioner

**:- Mr. Anil Kumar Dugar, Adv.
Mr. Rajarshi Chatterjee, Adv.
Mr. Piyal Gupta, Adv.**

For the Respondent

**:- Mr. Anirban Roy, Ld. Govt. Pleader
Mr. Soumitra Mukherjee, Adv.
Mr. Nilotpal Chatterjee, Adv.**

Judgment On

:- 13.05.2022

MD. NIZAMUDDIN, J.

The Court: Heard learned advocates appearing for the parties.

The instant Writ Petition has been filed by the Writ Petitioner against action of the respondent concerned denying it the concessional rate of tax on sales made by it to M/s Diesel Locomotive Works, Varanasi, by not accepting the 'D' Forms in question received from the said Diesel Locomotive Works on the ground that the said purchasing company is a registered dealer and not a Government company and the respondent no. 1 raising an additional assessment under the Central Sales Tax Act for the period 4 quarters ending 31st March, 2005 being Annexure-P1 to the Writ Petition. Against the said assessment order petitioner had filed the appeal before the respondent no. 2 challenging the action of consideration of the said 'D' Forms received by the petitioner from the Diesel Locomotive Works which is a unit of Indian Railways. Appellate authority confirmed disallowing of the aforesaid 'D' Forms on the ground that the said dealer is a Government concern and not a Government and, as such, 'D' Forms, issued by it cannot be accepted and by further on the ground that a Govt. concern being a registered dealer could not issue 'D'

Forms, by order dated 1st September, 2008 which is Annexure-P3 to the Writ Petition.

Against the aforesaid order of the Appellate authority dated 1st September, 2008 petitioner had filed a Revision Petition before the respondent no. 3 which was dismissed by the order dated 21st November, 2012.

Petitioner submits that the action of refusal to accept the aforesaid 'D' Forms by the respondents and denying the concessional rate of tax on the aforesaid sales to Diesel Locomotive Works is arbitrary and illegal by contending that the petitioner had entered into a genuine transaction with the said Diesel Locomotive Works which was issuing 'D' Forms at the relevant point of time against the sales made to them by any registered dealer throughout India and the said 'D' Forms were accepted by all the sales tax authorities of all the States in India and submits that since the 'D' Forms were issued by the said company were accepted by the sales tax authorities of other States in India, refusal to accept the 'D' Forms in question on the part of the State respondents concerned is highly unjustified and unreasonable.

Petitioner submits that at the time of placing the order in question on the petitioner by the said Diesel Locomotive Works they specifically mentioned in the order that tax at the rate of 4 percent would be charged on production of 'D' Forms and said Diesel Locomotive Works were all alone entitled to issue 'D' Forms in their State for the purchases made by them all over India. Petitioner further submits that during the year 2001-02 and 2002-03 petitioner sold goods to the said Diesel Locomotive Works and 'D' Forms were issued by them to the petitioner in respect of the same and which were allowed and accepted by the respondent no. 1 both in the assessment order and in appeal without raising any dispute. In support of its such contention petitioner has annexed relevant documents being Annexure-P-6 to the Writ Petition.

Petitioner submits that the said purchaser Diesel Locomotive Works is a unit of Indian Railways and it is a part of Indian Railway and it can be said that any other organization within the Government under Section 8 (1) (a) of the Central Act, the sales made to Government is exigible to tax at a

concessional rate provided 'D' Forms are produced. Petitioner submits that the said Diesel Locomotive Works though a registered dealer, is entitled to purchase goods at a concessional rate and since 'D' Forms have been sanctioned in their favour by the sales tax authorities concerned in the state of U.P. and that the said company accordingly issued 'D' Forms and such 'D' Forms were accepted by other states in India and as a registered dealer, though there was no bar on the part of the said Diesel Locomotive Works to obtain 'C' Forms but 'C' Forms were not allowed to them as they were considered as Government. Considering such aspect of the matter, the sales tax authority of U.P. issued 'D' Forms to them on the basis of transaction made with the petitioner, the respondents in the facts and circumstances of the case, are not justified in not accepting 'D' Forms in question in the present case which was issued after obtaining the same from their sales tax authority in U.P.

Petitioner submits that Section 8 (1) of the Central Sales Tax Act, 1956 is a substantive provision/charging Section in so far as it relates to sale in the course of inter-state trade or commerce to Government or Registered Dealer. Petitioner refers to Section 8 (1) of the Act as prevailed at material period under dispute which is as hereunder:

“8. Rate of tax on sales in the course of inter-state trade or commerce-

(1). Every dealer, who in the course of inter-state trade or commerce-

(a) sells to the Government any goods: or

(b) sells to a registered dealer other than the Government goods of the description referred to in sub section 3;

shall be liable to pay tax under this Act, which shall be four per cent of this turnover.

(4) The provision of sub-section (1) shall not apply to any sale in the course of inter-state trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner-

(a) a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority; or

(b) if the goods are sold to the Government not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorised officer of the Government.

.....”

Upon plain and harmonious reading of the aforesaid provisions, it appears that the provision as laid down under Section 8 (1) (a) is applicable in case of inter-state sale made to Government whether registered or not being registered and in case of Government not being a registered dealer, the selling dealer has to furnish certificate in Form D as referred to in Rule 12 (1) of the CST (Registration & Turnover) Rules, 1959. A selling dealer is not required to furnish any certificate or declaration if the sale is made to Government being a registered dealer.

Petitioner submits that in the instant case, it is admitted position that the petitioner had sold the goods in question to the Government being a registered dealer but the respondent disallowed the claim of said sale made under Section 8 (1) (a) of the Act on the ground that the same is not supported by declaration in Form C, which is wrong, erroneous and arbitrary since the same is applicable to sale made to registered dealer other than Government.

Petitioner submits that the aforesaid purchaser never disclosed itself as a dealer registered under the Uttar Pradesh Trade Tax Act and Central Sales Tax Act either in purchase order or certificate in Form D issued by them and hence, petitioner’s claim of concessional rate of tax could not be denied merely because it was later on found by the respondent authorities that the said purchaser was a registered dealer.

Petitioner submits that similar claim of sale made to the same Government on earlier occasions were regularly allowed by the respondent concerned in assessment for the past years on the basis of the said certificate in Form D and now the respondents could not take a different stand in subsequent year on similar facts and circumstances which is contrary to “Doctrine of Legitimate Expectation”. Respondents have not denied in its

affidavit-in-opposition this admitted fact that in past 'D' Forms relating to the similar transaction were accepted and claims were allowed.

Petitioner in support of its contention relies on a decision of Karnataka High Court in the case of Karnataka Dairy Development Corporation Limited Vs. Commissioner of Commercial Taxes in Karnataka reported in [1992] 87 STC 321 (Kar) and petitioner relies on Paragraph Nos. 2,4,5,6 & 8 of the aforesaid judgment which are quoted hereinbelow:

"2. There is no dispute that the transactions in question were inter-State sales. The assessing authority did not accept the "D" forms, but held that the appellant should have produced "C" form declaration. This was reversed by the appellate authority who held that "D" form was sufficient because it was the form furnished by the Indian Railways which is a department of Government of India. This order of the appellate authority was revised by the Commissioner under section 22A of the Karnataka Sales Tax Act, 1957.

4. The appellant was furnished with the declaration in "D" form by the Railways which were produced by the appellant. There is also no dispute about this. According to the Commissioner, Southern Railways being a registered dealer could have issued only "C : forms.

5. Section 8(4)(b) states if the goods are sold to the Government not being a registered dealer a certificate in the prescribed form shall have to be produced, the said certificate is the "D" declaration form. If it is a case of registered dealer, the form is to be the "C" form.

6. According to Mr. E. R. Indrakumar, the appellant had no control over the Indian Railways. Admittedly, the Indian Railways belonged to the Government of India. It has furnished the "D" declaration on its own which assures that it is not a registered dealer. The certificate issued by the railways clearly states that it is not a registered dealer. This statement will have to be accepted by the appellant since the appellant has no control over the registration or otherwise of the dealer who purchased the goods from the appellant.

8. One cannot assume that every dealer is a dealer liable to be taxed under the Central Sales Tax Act and, therefore, it is not possible to assume that every dealer should be treated as

a registered dealer and in such a situation, he should have issued the declaration under form "C" in the case of purchase in the course of inter-State sales. This apart, as already noted above, the appellant has no control over the manner of functioning of the Indian Railways. The Government of India has issued a declaration and prima facie the same shall have to be accepted without being unnecessarily influenced by the technicalities of procedural matters."

Learned advocate appearing for the respondents opposes the Writ Petition by contending as follows:

(i) The contents of the two Forms 'C' and 'D' are different as to their purpose which is apparent. Just as 'C' Forms are issued to registered dealers 'D' Forms are issued to the government. However, from 1.4.2007, the system of 'D' Forms have been stopped.

(ii) If the statute recommends that a particular thing has to be done in a particular way and in no other way, it has to be done in the way the statute prescribes and in no other way – this is how a settled legal position. Thus, the 'D' Forms cannot act as a replacement or substitute for 'C' Forms for like the contents of the respective forms, their purpose is also different. Thus, even after the discontinuation of the 'D' Forms by the Legislature, the 'C' Forms could not replace them. Now since the 'D' Forms are no longer in vogue, any government has to purchase any good on full payment of tax.

(iii) The judgment of Karnataka Dairy Development Corporation Ltd. Vs Commissioner of Commercial Taxes (supra) relied upon by the petitioner has no binding effect.

Considering the exceptional facts and circumstances of the case, the submission of the parties and the aforesaid judgment of the Hon'ble Karnataka High Court in the case of Karnataka Dairy Development Corporation Ltd. (supra) and in view of admitted fact that in past the respondents have already accepted the 'D' Forms and allowed the petitioner the concessional rate of tax on the similar sales in their assessment orders and appeals relating to 2001-02 and 2002-03, this Writ Petition is allowed by quashing the impugned

assessment orders and order of the Appellate authority and Revisional authority arising out of the impugned assessment order, by directing the respondent no. 1 to accept the 'D' Forms in question and to allow consequential benefits of concessional rate of tax to the petitioner, within three months from the date of communication of this order subject to factual verification of genuineness of the transaction in question.

With the observation and direction made as above, this Writ Petition being WPO No. 44 of 2013 stands disposed of. No order as to costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(MD. NIZAMUDDIN, J.)