HON'BLE SRI JUSTICE U.DURGA PRASAD RAO
AND
HON'BLE SMT JUSTICE VENKATA JYOTHIRMAI PRATAPA

WRIT PETITION No.8898 of 2023

ORDER: ***(per UDPR,J)***

The challenge in this Writ Petition is to the Revised Assessment Order passed by the First Respondent vide DIN No.3090237869, dated 09.03.2023, for the Assessment Year 2016-17 under the Central Sales Tax Act, 1956, in so far as it relates to levying tax on the Direct Export Sales and Sales in the Course of Export, which are exempted under Section 5(1) and Section 5(3) respectively of the CST Act, 1956, on the only ground that the 'H' forms and other related evidences were filed after passing of the Assessment Order as being contrary to the proviso to Rule 12(7) r/w Rule 12(10) of the CST (R&T) Rules, 1957. The petitioner prays for necessary orders in this matter.

2. The petitioner's case succinctly is thus:- The petitioner is a a Registered Dealer under the APVAT Act, 2005 and the Central Sales Tax Act, 1956, on the rolls of the 2nd respondent doing business in Granite. While so, 2nd respondent passed Assessment Order vide

A.O.No.ZH37122 0OD58654, dated 03.11.2020 *inter alia* imposing tax on the Direct Export Sales and Sales in the Course of Export, though they were exempted from tax under Section 5(1) and 5(3) of the Central Sales Tax Act, 1956, on the main ground that the petitioner has failed to file the requisite ‘H’ Forms and other evidences. The petitioner could not file those Forms in view of prevalence of Covid-19 Pandemic conditions, even though those forms were available with him.

3. Immediately after receiving the said Assessment Order on 16.11.2020, the petitioner vide its letter dated 07.12.2020 submitted Form ‘H’ and other relevant evidence in support of the Direct Export Sales and Sales in the Course of Export before the 2nd respondent with a request to pass Revised Assessment Order granting exemption on the aforesaid exports. However, after more than two years and three months, the 1st respondent passed the impugned Revised Assessment Order vide DIN No.3709032378769, dated 09.03.2023 confirming the assessment order, wherein though Form ‘C’ declarations were accepted by the said authority, however, refused to accept Form ‘H’ on the ground that the Form ‘H’ and documentary evidence were filed after

Assessment Order was passed and hence they cannot be accepted in view of the Government Order issued in No.REV/35024/12/2016-CT-II91)-1, dated 30.04.2016. Hence, this Writ Petition.

4. Heard Sri G.Narendra Chetty, learned counsel for petitioner and learned Government Pleader for Commercial Tax – I for the respondents.

5. Impugning the Revised Assessment Order in specifically refusing to accept Form-H and other relevant evidence produced by the petitioner in proof of making Direct Exports Sales and Sales in the Course of Export, learned counsel for petitioner, Sri G.Narendra Chetty, would submit that there is no embargo for accepting the Forms 'H' on the ground that they were not filed before the assessment was made by the 2nd respondent. In fact, the petitioner submitted a cogent reason for not filing those Forms i.e., due to prevalence of Covid-19 pandemic. Reiterating that there is no obstacle for accepting the Form 'H', learned counsel relied upon number of decisions, wherein this Court and other High Courts have directed the authorities to consider the Form 'H' and other evidence which were filed after assessment was

passed and to reopen the assessment and consider them and pass appropriate orders.

6. In opugnation, learned Government Pleader while opposing the Writ Petition would submit that in the light of Rule 12 (10) of Central Sales Tax (Registration & Turnover) rules 1957, the Form 'H' shall be furnished to the prescribed authority up to the assessment time by the first assessing authority and not thereafter and in view of the specific embargo, the respondents 1 and 2 were within their power to refuse the Forms 'H' and other relevant evidence and there are no merits in the Writ Petition and same may be dismissed.

7. The point for consideration is whether there are merits to consider the Writ Petition or not?

8. Admittedly the petitioner has not furnished Forms 'H' and other connected evidence showing that he made Export Sales and Sales in the Course of Export before the assessment order was passed by the 2nd respondent. His submission is that due to the prevalence of Covid-19 pandemic situations wherein a general ban was imposed by the Central and State Governments restricting the movements of the public, he could not submit the Forms before the 2nd respondent. His

submission is that in-fact even by the date of passing of the original assessment order dated 03.11.2020, the petitioner was very much in possession of the 'H' Form and other evidence to show that he made export sales, but for the Covid-19 situation, he would have submitted them promptly in time.

9. In this context a perusal of the copy of original Assessment order filed along with the material papers shows, the impugned order was passed by 2nd respondent on 3.11.2020, It is an admitted fact that since March, 2020, the Covid-19 pandemic was in force and thereby the Central and State Governments restricted the movements of the general public. Learned Government Pleader has not disputed this fact and hence we can take Judicial notice of the same.

10. In that view we find substance in the submission of learned counsel for petitioner that due to the prevalence of the Covid-19 pandemic, he could not file Forms 'H' and other relevant material to establish that in deed he made exports sales.

11. In Writ Petition No.1466/2017, a Division Bench of the Common High Court of the Andhra Pradesh was considering the issue whether Forms 'C' and Forms 'H' which were filed after assessment

order can be directed to be considered by the assessing authority. In that context, the following order is passed:-

> " *In response to the aforesaid order, it is submitted by the learned special standing counsel that the matter may be remitted back to the 1st respondent for considering the 'H' Forms. It appears that 'C' forms submitted, after the assessment, were accepted by the 1st respondent under Rule 12(70 of the CST (R&T) Rules. But, the same facility was not extended to the 'H' Forms.*
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> *Therefore, the Writ petition is allowed, the impugned order is set aside, and the matter remitted back to the 1st respondent for a fresh consideration. The 1st respondent shall take into account the 'H' Forms also and pass a fresh order of assessment, in accordance with law."*

12. Relying upon the said Judgment and other relevant judgments, a Division Bench of this High Court in Writ Petition No.14638 of 2019 passed the following order.

> " *Having regard to the judgments referred to above and the judgment of this Court and the Hon'ble Apex Court, we feel that it is a fit case where the relief sought for by the petitioner can be granted to the extent of directing the authority to reopen assessment filed by the petitioner through letter, dated 2.5.2017 and deal with the acceptance of the documents, more particularly, 'C' form and 'H' form declarations and then pass orders in accordance with law, within a period of three months from the date of receipt of a copy of this order."*

13. In ***Raj Trading Company Vs. State of Punjab***[1] in similar circumstances, the High Court of Punjab also having observed that the petitioner therein was in possession of 'H' Form by the date of original assessment order and appellate order showing prima facie that the goods were exported out of the country, directed the appellate authority for adjudication of the matter afresh with respect to the forms 'H' and 'C' relied upon by the appellant.

14. Needless to emphasize the above citations relied upon by the petitioner apply with all the fours to the case on hand. In that view, we deem it apposite to allow the Writ petition and remit the matter back to the 1st respondent for reconsideration.

15. Accordingly, this Writ Petition is allowed and the Revised Assessment Order dated 09.03.2023 passed by the 1st respondent is set aside to the extent of the said authority refusing to accept the Forms 'H' and other relevant material produced under section 5(1) and 5 (3) of CGST Act with a direction to consider those materials produced by the petitioner and afford an opportunity of hearing to the petitioner to establish the genuinety of those documents and after affording an

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[1] [2014]71 VST 423 (P&H)

opportunity of hearing to both parties, pass an appropriate order on merits afresh expeditiously.

As a sequel, miscellaneous applications pending, if any, shall stand closed. No costs.

U. DURGA PRASAD RAO, J

VENKATA JYOTHIRMAI PRATAPA, J

19.04.2023
KKV