

Ms Ads Spirits Private Limited And Anr Vs Commissioner Of Trade And Tax Department & Anr

Court: Delhi High Court

Date of Decision: Oct. 20, 2020

Hon'ble Judges: Manmohan, J; Sanjeev Narula, J

Bench: Division Bench

Advocate: Praveen Kumar, Rajiv Agnihotri, Babita Sant, Sunaina Kumar, Satyakam

Final Decision: Disposed Of

Judgement

Manmohan, J

1. The petition has been listed before this Bench by the Registry in view of the urgency expressed therein. The same has been heard by way of video

conferencing.

2. Present writ petition has been filed challenging order dated 1st July, 2020 whereby respondent no.2 has rejected petitioner's application for

rectification of Form F for Assessment Year 2017-18. Petitioners further seek a direction to the respondents to issue Form F for period May

2017 to March 2018. It is also prayed that respondents be prohibited from taking any coercive actions against the petitioner pursuant to directions dated

1st July, 2020.

3. Learned counsel for the petitioners states that while filing its returns for the period April, 2017 to March, 2018, the petitioner had inadvertently

mentioned the entire stock to be from Haryana whereas the stock had been procured from both Punjab and Haryana. He points out that on account of

the said mistake, the Form F generated for the said period is the aggregate of the supplies of Punjab as well as Haryana whereas it should have been

separate for both the States.

4. He further states that having discovered the aforesaid mistake, the petitioner requested for correction/modification in Form 'F' for the Financial

Year 2017-18 vide letter dated 19.02.2020 to the Assistant Commissioner, Department of Trade and Taxes (Respondent No.2 herein).

5. He states that the petitioners challenged the impugned order dated 1st July, 2020 whereby the respondent had rejected the petitioner's

rectification request before the Supreme Court by way of WP(C) No.874 of 2020. However, he points out that the said petition was dismissed vide

order dated 7th September, 2020 while granting the petitioners the liberty to take appropriate remedy against the impugned order.

6. Learned counsel for the petitioners submits that there is no provision either in the Central Sales Tax Act, 1956 or Central Sales Tax (Delhi) Rules,

2005 under which the assessing Authority can refuse to issue Forms 'F' and consequently, the order of the Assessing Authority in refusing to

issue Form 'F' to the petitioner who is otherwise entitled to the same is without authority of law and is arbitrary and liable to be quashed. He relies

upon the order of this Court in *M/s. Ingram Micro India Pvt. Ltd. v. Commissioner DT&T & Anr.*, W.P. (C) No. 8272/2015.

7. On the other hand, Mr. Satyakam, learned Additional Standing counsel for the respondents submits that the decision of this Court in *M/s. Ingram*

Micro India Pvt. Ltd (supra) is under challenge before the Supreme Court in Civil Appeal No. 4573/2017 and the Supreme Court has granted leave in

the said matter vide order dated 27th March, 2017. He also points out that this Court rendered decisions in several similar cases, including W.P. (C)

No. 2633/2017, *M/s. Indian Oil Corporation Ltd. v. Commissioner, VAT* decided on 11th April, 2017, which have been appealed against in the

Supreme Court and the Supreme Court has stayed the operation of the judgment of this Court.

8. Mr. Satyakam points out that in the light of the interim orders passed by the Supreme Court, while deciding another writ petition i. e. *Ingram Micro*

India Ltd. v. Commissioner, Department of Trade and Taxes and Anr., W.P. (C) No. 8435/2018, decided on 04th December, 2018, this Court issued

directions for issuance of segregated and separate Form 'F' Forms. However, the directions issued by this Court were suspended till the Civil

Appeals before the Supreme Court were pending.

9. Same is the position in the decision of this Court in *Allied Automation Engineering Services Pvt. Ltd. v. Commissioner of Trade and Taxes*, W.P. (C)

No. 9474/2018 decided on 10th September, 2018, in *M/s. Samsung C&T Pvt. Ltd. v. The Commissioner, Trade & Taxes, & Anr.*,

W.P. (C) No. 4092/2017 decided on 15th February, 2019, in *E.I. Dupont India Private Limited v. Commissioner, VAT, Delhi & Anr.*, C.M. No.

47356/2018 in W.P. (C) No. 4952/2017 decided on 27th February, 2019, in *C G Power And Industrial Solutions Limited vs Department of Trade and*

Taxes & Ors., W.P. (C) No. 3024/2019 decided on 15th January, 2020, in *Shri Uday Jain Prop. M/s Dhoomimal Gallery Vs. Commissioner, Trade*

and Taxes & Ors., W.P.(C) No. 4411/2020 decided on 23rd July, 2020 and in *GSP Power System Pvt. Ltd. Vs. Commissioner of Goods and Services*

10. Mr. Satyakam contends that this Court has recently in similar matters been either adjourning matters or is allowing the petition but su spending the

relief till the civil appeals pending in the Supreme Court are decided.

11. Having heard the counsel for the parties, this Court is of the view that no useful purpose would be served by keeping the petition pending.

Consequently, this Court directs the respondent no.2 to allow the amendment sought for by the petitioner in its return of Assessment Year 2017-18.

However, this direction shall remain suspended till the Civil Appeals pending before the Supreme Court, taken note of hereinabove, are decided and

this direction shall abide by the decision that the Supreme Court renders.

12. With the aforesaid direction, present writ petition and pending applications stand disposed of.

13. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.