(2008) 10 MAD CK 0129

In the Madras High Court

Case No : Writ Petition No. 23797 of 2008 and M.P. No''s. 1 and 2 of 2008

Alfine Knit Private Limited — APPELLANT

Vs

Commercial Tax Officer — RESPONDENT

Date of Decision : 23-10-2008

Acts Referred:

Tamil Nadu Value Added Tax Act, 2006 — Section 88(2)
Tamil Nadu Value Added Tax Rules, 2007 — Rule 4(8)

Citation : (2009) 21 VST 359

Hon'ble Judges : S. Rajeswaran, J

Bench : Single Bench

Advocate : Rajkumar, for the Appellant; Manibharathi, Government Advocate (T), for the Respondent

Judgement

S. Rajeswaran, J.—The writ petition has been filed to call for the records of the respondent in PDL. 178/2007/A2 and to quash the impugned proceedings dated April 12, 2007 insofar as the petitioner is concerned and to further direct the respondent to issue fresh certificate of registration to the petitioner under the Tamil Nadu Value Added Tax Act, 2006 from January 1, 2007.

2. The petitioner is an exporter of ready-made garments and a registered dealer under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (TNGST Act). In order to introduce the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act), the State Government repealed the TNGST Act with effect from January 1, 2007. Those dealers who are registered under the TNGST Act were given Tax Payer Identification Number (TIN) by the State Government through its web site assigned to the dealers and they were permitted to file returns under the provisions of the TNVAT Act. However, as per the provisions of the TNVAT Rules, every registered dealer under the provisions of the TNGST Act shall file an application in form A along with a sufficiently stamped self-addressed envelope to the registering authority without payment of specified fee before February 15, 2007.

3. In the case of the petitioner, the TIN Number was assigned by the State Government even before the introduction of TNVAT Act from January 1, 2007. But the petitioner could not file application for obtaining fresh certificate of registration because he was handicapped without a proper accountant for the firm to file the statutory forms before the Department. However, the petitioner filed the monthly returns for the months of January 2007 to March 2007 and for the assessment year 2007-08 from April 2007 to November 2007. But to the surprise of the petitioner, the respondent issued a notice dated June 2, 2008 informing the petitioner that the registration certificate has already been cancelled with effect from January 1, 2007 for non-submission of fresh application (form A) for registration under the TNVAT Act. Challenging the proceedings of cancellation of registration certificate, the present writ petition has been filed for the above prayer.

4. Learned Counsel for both sides submitted that similarly placed persons like the petitioner filed W.P. No. 7024 of 2007 and by an order dated August 29, 2007, reported in Majri Steels v. Commercial Tax Officer, Tiruchy [2007] 9 VST 433, this Court passed the following order : (at page 435)

It is only under the Tamil Nadu Value Added Tax Rules, 2007 that the requirement to apply in a particular format before the particular time-limit was prescribed.

Rule 4(8) of the Rules reads as follows:

Rule 4(8): Every registered dealer whose certificate of registration was in force under the Tamil Nadu General Sales Tax Act, 1959 shall file an application in Form A, along with a sufficiently stamped self-addressed envelope to the registering authority without payment of specified fee (before the 15th day of February 2007).

A reading of Section 88(2) together with Rule 4(8) shows that a time-limit for submitting an application was fixed not under the statute, but under the subordinate legislation. Neither the Act nor the subordinate legislation prescribed the consequences of the failure of a registered dealer to apply within the time-limit prescribed. If that be so, the first respondent ought not to have issued the impugned order cancelling the registration even if the petitioner had not filed an application on January 18, 2007. Under such circumstances, this writ petition deserves to be allowed. Therefore, it is allowed, the impugned order is set aside and the petitioner is directed to submit an application within a period of one week from the date of receipt of a copy of this order. Upon the petitioner submitting such an application, the first respondent shall apply the provisions of Section 88(2) of the Act and pass appropriate orders. Consequently, connected M. Ps. are closed. No costs.

5. Learned Counsel for the petitioner submits that similar order may be passed in this case also.

6. In view of the fact that neither the Act nor the subordinate legislation prescribed the consequence of the failure of a registered dealer to apply within the time-limits prescribed, the impugned order passed by the respondent is liable to be set aside.

7. In the result the order made in the proceedings No. PDL.178/2007/A2 dated April 12, 2007 passed by the respondent is set aside. No costs.

8. Consequently connected M. P.s are closed.

9. The petitioner is hereby directed to file appropriate application before the concerned authorities within a period of two weeks from the date of receipt of a copy of this order. On such application being filed by the petitioner, the respondent-department is directed to apply the provisions of Section 88(2) of the Act and pass appropriate orders within four weeks from the date of receipt of such application on merits and in accordance with law.

10. In the result, the writ petition is disposed of in the above terms.

