(2007) 07 MAD CK 0282

In the Madras High Court

Case No : Writ Petition No. 24352 of 2007 and M.P. No. 1 of 2007

Bharath Steel Rolling Mills APPELLANT

Vs

Commercial Tax Officer RESPONDENT

Date of Decision : 19-07-2007

Acts Referred:

Constitution of India, 1950 — Article 301, 304
Tamil Nadu Tax on Entry of Goods into Local Areas Act, 2001 — Section 15, 2

Citation : (2009) 26 VST 646

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : R. Hemalatha, for the Appellant; R. Mahadevan, Additional Government Pleader, for the Respondent

Judgement

S. Manikumar, J.—This writ petition is filed for a writ of certiorarified mandamus to quash the order dated December 19, 2006 and subsequently for a direction to refund entry tax collected to the petitioner paid by them as per the petitioner''s representation dated June 29, 2007.

2. The petitioners are manufacturers of mild steel rods, angles, channels, bars, flats and squares at Salem and assessee on the files of the Commercial Tax Officer, Shevapet (North) Circle, Salem.

3. The petitioner caused entry of goods such as M.S. Ingots from other States for the purpose of use in the manufacturing activities and therefore, it would come under the expression "importer" as defined u/s 2(g) of the Act. Subsequent to the notification of the State Government dated March 27, 2002, the petitioner was made liable to pay entry tax. The respondent in his proceedings in TNGST No. 2740155/2002-03 (entry tax) dated December 19, 2006 determined the purchase price of M.S. Ingots at Rs. 3,98,04,700 and collected tax of Rs. 15,92,188 under the Tamil Nadu Tax on Entry of Goods into Local Areas Act, 2001.

4. Placing reliance on the Division Bench judgment of this Court in ITC limited v. State of Tamil Nadu reported in [2007] 7 VST 367, learned Counsel for the petitioner submitted that the impugned order is contrary to the Division Bench judgment and therefore, it is liable to be set aside and consequently the petitioner is entitled to refund of tax paid by the petitioner.

5. The constitutional validity of the Tamil Nadu Tax on Entry of Goods into Local Areas Act, 2001 and various notifications issued by the State Government in exercise of the powers conferred by Section 15 of the Act was challenged in a batch of writ petitions and the Division Bench of this Court in ITC Limited v. State of Tamil Nadu reported in [2007] 7 VST 367 has held as follows : (page 400)

... We hold that the levy of entry tax on goods imported from other States to the State of Tamil Nadu and from abroad is not compensatory in nature, since the State Government could not discharge its burden by placing materials before the court that payment of levy of entry tax is reimbursement/recompense for the quantifiable/measurable benefit provided or to be provided to the tax-payers. The impugned levy imposing entry tax being discriminatory is also violative of Article 304(a) of the Constitution. We, therefore, hold that the demand and collection of entry tax under the Tamil Nadu Tax on Entry of Goods into Local Areas Act, 2001 is illegal, unauthorised and violative of Article 301 of the Constitution. The writ petitions are allowed as above and the levy and demand notices issued would stand quashed....

6. Mr. R. Mahadevan, Additional Government Pleader appearing on behalf of the respondent submitted that the issue is covered by the above said decision of the Division Bench and therefore, the impugned order may be set aside. He further submitted that insofar as the refund is concerned, suitable directions may be issued to the petitioner to approach the competent authority, for the said relief.

7. Following the Division Bench judgment and considering the submission of both counsel, the impugned order is set aside.

8. Insofar as the consequential relief for refund is concerned, it is sufficient that a direction is issued to the respondent to consider the representation of the petitioner dated June 29, 2007 for refund of the entry tax collected from the petitioner and pass appropriate orders on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected M.P. No. 1 of 2007 is closed.

