(2007) 08 MAD CK 0224

In the Madras High Court

Case No : Writ Petition No. 15385 of 2007

Built Tech Designs (P) Ltd. APPELLANT

Vs

Deputy Commercial Tax Officer and Another RESPONDENT

Date of Decision : 20-08-2007

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 36, 36(1)
Tamil Nadu Sales Tax Appellate Tribunal Regulations, 1959 — Regulation 7, 7(5)

Citation : (2009) 24 VST 95

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : A. Prabakaran, for the Appellant; J. Ganesan, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

S. Manikumar, J.—The petitioner has sought a writ of certiorarified mandamus to quash the order of the second respondent in Re. No. 16070/05/A1 dated January 31, 2006 and provide an opportunity to re-present the appeal filed u/s 36(1) of the Tamil Nadu General Sales Tax Act, 1959 with a petition seeking condonation of delay and for further orders.

2. Brief facts leading to the writ petition are as follows:

The petitioner is a building contractor and a registered dealer on the file of the first respondent, the Deputy Commercial Tax Officer, Mandaveli Assessment Circle. For the assessment year 1999-2000, the assessing officer by his proceedings in TNGST No. 0761287/1999-2000 dated August 22, 2003, determined a total and taxable turnover of the petitioner at Rs. 7,48,787 and Rs. 7,07,419, respectively. Aggrieved by the same, an appeal in A. P. No. 200 of 2003 was filed before the Appellate Assistant Commissioner (CT) IV and the same was dismissed on April 6, 2004 and a copy of the order was served on the petitioner on April 30, 2004. Against which, a second appeal was filed u/s 36 of the TNGST Act before the second respondent, the Tamil Nadu Sales Tax Appellate

Tribunal, Chennai, on June 29, 2004. The Registrar of the Tamil Nadu Sales Tax Appellate Tribunal has returned the appeal papers for production of payment receipts of the entire disputed tax, in compliance with the statutory pre-condition for entertaining an appeal. Thereafter, the appeal papers were re-presented with payment receipts, in proof of having paid the balance of tax. The appellate authority, on perusal of the records and placing reliance on the decision in State of Tamil Nadu v. E.P. Nawab Marakkadai reported in [1996] 100 STC 1 (Mad), rejected the appeal on the ground that there was an abnormal delay of 414 days in filing the second appeal. Aggrieved by the same, the petitioner has preferred the present writ petition.

3. Mr. A. Prabhakaran, learned Counsel for the petitioner, submitted that the order passed by the first appellate authority was received by the petitioner only on April 30, 2004 and that the appeal before the second respondent was filed on June 29, 2004, which is within the time-limit. He further submitted that though the petitioner has paid the disputed tax amount through demand draft on August 3, 2004 and the same was acknowledged by the authority on August 6, 2004, the assessing officer has issued the certificate only on October 26, 2005. He further submitted that in any event, as per the Regulation 7, Sub-clauses (2) and (3), the assessee should have been called upon by a notice in form A to rectify the defects within the reasonable time and that before rejecting the appeal, the second respondent ought to have fixed a date of hearing, after giving notice to the assessee. He also submitted that as per the calculation, there is only a delay of 34 days in filing the statutory appeal, which is within the extended period of limitation provided u/s 36 of the TNGST Act.

4. On the other hand, Mr. J. Ganesan, learned Counsel for the respondent, submitted that the petitioner has failed to comply with the requirements u/s 36(1) of the TNGST Act. He further submitted that the words "any appeal shall be entertained" in Section 36(1)(a) means that an assessee should have filed satisfactory proof of payment of tax admitted by him, due to the Government. In the instant case, the petitioner has belatedly paid the admitted tax and therefore, the order of rejection is valid.

5. I have considered the submissions made on either side and perused the materials filed in support of the petition.

6. It is evident from the pleadings, an appeal has been filed on June 29, 2004 within the period of limitation. As per Section 36(1)(ii) of the TNGST Act, the statutory appeal has to be preferred within 60 days from the date on which the order was served in the manner prescribed. As per the proviso to the said section, the Appellate Tribunal may, admit an appeal presented after the expiration of the first mentioned period of 60 days, as the case may be, if it is satisfied that the appellant had sufficient cause for not presenting the appeal within the first mentioned period.

7. As per Sub-clause (2) of regulation 7 of the Tamil Nadu Sales Tax Appellate

Tribunal Regulations, 1959, if the Secretary finds that the appeal does not prima facie fall u/s 36(1) of the Act, he shall report to the Chairman who may either reject the appeal and order the papers to be returned to the party or fix a date of hearing the matter before the Tribunal after giving notice to the party and the State Representative and thereupon the provisions of Regulation 7(5) below shall apply.

8. Sub-clause (3) of regulation 7 reads as follows:

(3) If the Secretary finds that the appeal does not conform to the requirements of the Act, the Rules and these Regulations, he shall call upon the party by a notice in form A in the Schedule to these regulations to remedy the defect or defects within a reasonable period specified by him. The Secretary may for sufficient cause extend the period. If the defect or defects are remedied within the period allowed, the Secretary shall cause the appeal to be registered.

9. It is the case of the petitioner that the appeal papers were returned for production of payment receipts and the same were re-presented on August 6, 2004. If that be the case, the proper course to be adopted by the second respondent is that he should have asked the petitioner/assessee to file an application for condonation of delay, if it exceeds more than 60 days, as per Section 36(1) of the Act or in the alternative, he should have fixed the date for hearing the matter by giving specific notice before rejecting the appeal.

10. Another lacuna in the impugned order is that the order proceeds on the footing that the appeal itself is not maintainable. As regards the delay, the time for filing the appeal can be applied from the date of receipt of a copy of the order passed by the appellate authority and not by the original authority. Under such circumstances, the order passed by the appellate authority deserves to be set aside and accordingly, set aside.

11. The assessee shall re-present the papers along with the payment certificate to satisfy the requirements for entertaining the appeal, with the condone-delay petition, within a period of two weeks from the date of receipt of a copy of this order and the second respondent is directed to take up the condone-delay petition and pass orders on merits and in accordance with law, within a period of two weeks thereafter. With the above direction, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is also closed.