(2014) 12 MAD CK 0240

In the Madras High Court

Case No : Writ Petition No. 25110 of 2008 and M.P. No. 1 of 2008

Chandra Textiles Private Limited — APPELLANT

Vs

The Commercial Tax Officer — RESPONDENT

Date of Decision : 10-12-2014

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 16

Citation : (2014) 12 MAD CK 0240

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Judgement

T.S. Sivagnanam, J.—Heard Ms.Hema Muralikrishnan, learned counsel for the petitioner and Mr. Manokaran Sundaram, learned Additional Government Pleader for the respondent and with the consent of either side, the Writ Petition itself is taken up for final disposal.

2. The petitioner is a registered dealer under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (for short, "TNGST Act") and the challenge in this Writ Petition is to an order of assessment, dated 08.09.2008, for the year 2002-03.

3. The petitioner is a dealer in cotton yarn and they were assessed on a total and taxable turnover of Rs.225746429/- and Rs.205917542/- respectively for the year 2002-03 under the provisions of the TNGST Act levying tax on dyes and chemicals used in the dyeing contract. The petitioner did not challenge the order of assessment by filing an appeal. But, the petitioner filed a Writ Petition before this Court in W.P. No.1295 of 2005. The contention raised by the petitioner in the said Writ Petition was that the objections, which was called for by the Assessing Officer, were submitted by the petitioner/assessee, however, while framing the assessment, the Assessing Officer did not deal with any of the objections, but proceeded to frame the assessment by relying on a decision of the Bombay High Court in the case of Commissioner of Sales Tax vs. Matushree Textiles, reported in 132 STC 539. The said Writ Petition along with other Writ Petitions filed by

other assessees were disposed of by a common order, dated 01.09.2006, and the matters were remanded to the Assessing Officer to reconsider the issue by giving detailed reasons for the objection raised by the petitioner either by accepting or rejecting the same. Pursuant thereto, the respondent issued a notice, dated 13.05.2008, by referring to the direction issued by this Court in the earlier Writ Petition and called upon the petitioner to file their objections within a period of fifteen days. The petitioner filed their objections on 27.05.2008. Copy of the objections has been filed in the typed-set of-papers, from which, it is seen that the objections made by the petitioner was on the merits of proposed revision. Thereafter, the respondent considered the objections filed by the petitioner and passed the impugned order of assessment. The petitioner has challenged the impugned proceedings on the ground that after the earlier Writ Petition was disposed of by this Court on 01.09.2006, a Circular was issued by the Commissioner of Commercial Taxes, Chennai, on 23.07.2007, based on the newly inserted Section 12-C of the TNGST Act, which was inserted by Act No. 37 of 2006, which states that notwithstanding anything contained in the TNGST but subject to the provisions of Section 16, the assessment of a dealer in respect of the assessment for the period prior to the 01.04.2006 shall be on the basis of the return relating to his turnover and on the basis of the declaration or certificate as may be prescribed, furnished on or before the 31.03.2007 and such return shall be accepted without requiring the presence of the dealer or production of books of accounts by the dealer subject to such conditions as may be prescribed.

4. The contention now raised before this Court by the learned counsel for the petitioner is that on and after the introduction of Section 12-C of the TNGST Act, the respondent cannot call for any particulars from the petitioner and he is bound to proceed in accordance with Section 12-C of the TNGST Act and since the said provision is applicable, the impugned order has to be held to be bad in law. The learned counsel for the petitioner further submitted that this Court in the case of Vijayalakshmi Mills Limited vs. The Deputy Commissioner (CT) (FAC), in W.P. No. 14833 of 2002 etc., and batch cases, by order dated 26.06.2012, had quashed the assessment orders on the ground that the assessing officer has not followed the principles contemplated in Section 12-C of the TNGST Act and has not passed deemed assessment orders accepting the returns filed by the petitioner and the Writ Petitions were allowed and the assessment orders were quashed with the direction to the concerned Assessing Officer to take up the matter and pass fresh orders of assessment. He further submitted that this Court in the case of Pioneer Agro Industry Vs. The Commercial Tax Officer, , has held that even in cases of assessment under Section 12-C of the Act, if the Assessing Officer is of the opinion that the dealer is not entitled for any exemption, rebate, etc., he can always call upon such dealer to produce necessary documents or reject the claim. It is further held that if all the returns submitted by the dealer are simply to be accepted on mere submission without verification, then it would lead to chaos, as there is every possibility of dealer submitted returns claiming

exemption, rebate or reduction in rate of tax, as the case may be. Further, since the Amended Section and Amended Rules do not take away the right of the Assessing Officer to examine the returns, the contention of the petitioner that the returns have to be accepted automatically cannot be countenanced.

5. When another Writ Petition came up for consideration before this Court in W.P. No. 4198 of 2007 (Voltas Limited vs. The Assistant Commissioner), this Court by order, dated 23.11.2012, took into consideration, both the aforesaid decisions and directed the matter to be placed before the Hon''ble Chief Justice for resolving the conflict by a Division Bench. The matter is now pending. At this point of time, learned counsel for the petitioner submitted that the issue with regard to the procedure to be followed in respect of assessment under Section 12-C of the TNGST Act is yet to attain finality in the light of the reference made to the Hon''ble Division Bench. However, in the facts and circumstances of the case, the necessity to go into this aspect does not arise and therefore, in my opinion, the present proceedings need not await the reference to be answered by the Hon''ble Division Bench.

6. The above conclusion is being substantiated by the following reasons: The petitioner approached this Court on the earlier occasion by filing W.P. No. 1295 of 2005, challenging the assessment order dated 30.11.2004. This assessment order was pursuant to a pre assessment notice, dated 30.09.2004. The complaint before this Court was that the Assessing Officer did not refer to the objections, but, he has simply relied upon the decision of the Bombay High Court in the case of Commissioner of Sales Tax vs. Matushree Textiles, reported in 132 STC 539 and framed the assessment. Similar plea was raised by the other assessees as well. This Court considered the contentions raised and held that it is the duty of the Assessing Officer to give reasons as to why the judgment relied on by the assessees are not applicable to their case and this aspect of the matter has been given a go-by by the Assessing Officer and none of the objections raised by the assessees have been considered by the Assessing Officer, but, on the contrary the Assessing Officer reached the conclusion based on his own reasoning, which is impermissible in law and hence, the assessment orders were set aside and the said Writ Petition along with other Writ Petitions filed by other assessees were allowed and the matters were remitted back to the Assessing Officer to reconsider the issue by giving detailed reasons for the objections raised by the petitioners either by accepting or rejecting the same. In terms of the above direction of this Court, what the Assessing Officer was required to do is to call upon the petitioner to appear and submit their objections. This is what precisely the Assessing Officer has done and he has issued a notice to the petitioner on 13.05.2008. The petitioner has filed his objections dated 27.05.2008, in which, they did not raise the contention that on account of insertion of Section 12-C of the TNGST Act, the assessment has to be made under Section 12-C of the TNGST Act, rather the petitioner resisted the Department''s view by contesting the matter on merits. The petitioner fully participated in the assessment proceedings and the same has ultimately resulted in the impugned order.

Therefore, on the grounds raised by the petitioner stating that after the introduction of Section 12-C of the TNGST Act, the Assessing Officer could not have passed the impugned order is a submission, which deserves to be rejected. The case of the petitioner does not fall within the ambit of Section 12-C of the TNGST Act and it is a matter pertaining to assessment year 2002-03 and proceedings were initiated in 2004 and after this Court allowed the earlier Writ Petition in W.P. No.1295 of 2005, by order dated 01.09.2006, the matter was remanded with a specific direction to the Assessing Officer to complete the assessment in a particular manner. The petitioner also knowing fully well participated in the assessment proceedings by submitting their objections. Therefore, it is too late for the petitioner to now come before this Court and contend that the assessment should have been done under Section 12-C of the TNGST, hence, on the said ground, the impugned order of assessment cannot not be quashed. Accordingly, the Writ Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs. It is made clear that this would not preclude the petitioner from filing an appeal before the Appellate Authority as against the impugned order of assessment. If such an appeal is filed within 30 days from the date of receipt of a copy of this order, the Appellate Authority shall entertain the appeal without rejecting the same on the ground of limitation and deal with the matter in accordance with law.