
(2014) 08 MAD CK 0242
In the Madras High Court
Case No : W.A.(MD) No. 977 of 2014

Chetak Timber Products (P) Ltd.

APPELLANT

Vs

The Joint Commissioner

RESPONDENT

Date of Decision : 12-08-2014

Acts Referred:

Citation : (2014) 75 VST 481

Hon'ble Judges : R. Mahadevan, J;M. Jaichandren, J

Bench : Division Bench

Judgement

R. Mahadevan, J.—Challenge in this writ appeal is to the order passed by the learned Judge, dated 12.09.2013 in W.P.(MD) No. 14335 of 2012.

2. Brief facts necessary for the disposal of this writ appeal, would run thus:

2.1. The appellant who engaged in Timber business, used to import timber logs from abroad and sell the same to various dealers in different States against prior orders. For the assessment year 2002-2003, the appellant reported the taxable turnover as Rs. 47,87,674/-. The second respondent, by his assessment order dated 29.10.2010, determined the tax on the said turnover payable by the appellant as Rs. 1,91,507/-. The second respondent also levied a penalty of Rs. 2,87,260/- for the reason that the appellant having effected the sale of timber for Rs. 47,87,674/- and collected CST at the rate of 4%, failed to pay the amount against the CST collected along with the returns filed for the assessment year. Subsequently, the appellant found that it had inadvertently reported the taxable turnover and hence, the appellant disputed the assessment order by filing the appeal in A.P. No. 3 of 2011 before the Appellate Deputy Commissioner (CT), Trichy. While so, the State Government introduced the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2011 [Act No. 29 of 2011] with OTS (One Time Settlement) Scheme to expedite the settlement of arrears in the pending cases. In this regard, the second respondent issued a notice to the appellant on 12.03.2012 for payment of tax to the tune of Rs. 76,603/- and interest at Rs. 8,138/-. Thereafter, the appellant filed an application in Form-I as per Rule 3(1)

of the Tamil Nadu Sales Tax (Settlement of Arrears) Rules, 2011, along with the remittance of tax of Rs. 57,451/- and also Rs. 5,667/- towards interest by calculating 40% of the arrears towards tax and 7.5% interest after deducting the payment already made at the time of filing of the appeal. But, the first respondent rejected the Samadhan application filed by the appellant by way of the impugned proceedings dated 16.07.2012 stating that the balance amount payable, viz., 96,623/- is more than 10%, in the absence of any show cause notice. According to the appellant, the impugned proceedings had been issued against the object of the above said scheme. Hence, the appellant filed the writ petition.

2.2. According to the respondents, the appellant failed to pay the entire demand as per the notice dated 12.03.2012 and therefore, the application filed by the appellant was rejected as per Section 6(3) of the Act No. 29 of 2011. It is further contended that having not complied with the condition precedent regarding full payment under demand, the appellant cannot plead denial of opportunity and more so, the pendency of the appeal filed by the appellant had no relevance with the impugned order. Hence, the respondents prayed for the dismissal of the writ petition.

2.3. Upon consideration of the rival submissions and the materials available, the learned Judge held that the appellant ought to have paid 90% of the amount payable under Section 7 of the Act and if there was any default, the authority concerned could summarily reject the application under Samadhan Scheme and found that since the balance of the admitted tax payable by the appellant was more than 10%, the designated authority had rightly rejected the claim of the appellant and accordingly, dismissed the writ petition. Aggrieved over the same, the appellant has filed the present writ appeal.

3. The learned Counsel for the appellant contended that the impugned proceedings passed by the first respondent had no legs to stand as the same came into existence without issuing any show cause notice to the appellant and the very object of the Scheme itself was defeated by the first respondent, by passing the impugned order and the learned Judge had not considered the same and hence, he prayed for setting aside the order of the learned Judge.

4. Per contra, the learned Special Government Pleader appearing for the respondents argued that since the appellant failed to comply with the condition precedent, he was not made to avail the Samadhan Scheme and hence, the order passed by the first respondent is tenable and the learned Judge had correctly dismissed the writ petition.

5. We have considered the rival submissions and perused the materials available on record, including the order of the learned Judge of this Court.

6. The issue that arises for consideration, is, whether the appellant is entitled to avail the Samadhan Scheme as per the provisions of the Tamil Nadu Sales Tax (Settlement and Arrears) Act, 2011?

7. The appellant was assessed the taxable turnover of Rs. 47,87,674/- and the second respondent determined the tax on the said turnover as Rs. 1,91,507/- by his assessment order dated 29.10.2010. The second respondent levied penalty of Rs. 2,87,260/- as the appellant failed to pay the amount against the CST collected at 4%. Challenging the same, the appellant had filed an appeal, which is also pending. In terms of the provisions of the Tamil Nadu Sales Tax (Settlement and Arrears) Act, 2011, the appellant sought to avail the Samadhan Scheme. The first respondent, by his proceedings dated 16.07.2012, rejected the claim of the appellant on the ground of non-compliance of the condition precedent imposed under the Act.

8. Now, we find it necessary to reproduce hereunder the relevant provisions of the Tamil Nadu Sales Tax (Settlement and Arrears) Act, 2011:

?Section 6. Determination of amount payable by the applicant.

(1) The Designated Authority shall verify the correctness of the particulars furnished in the application made under Section 5 with reference to all relevant records and determine the amount payable at the rates specified in Section 7.

(2) The Designated Authority shall demand further amount payable by the applicant in the form prescribed, if the amount paid by the applicant along with Application falls short of not more than ten per cent of the amount determined under sub-section (1).

(3) If the applicant has not paid ninety per cent of the amount payable under Section 7 along with the application, the Designated Authority shall summarily reject the Application.

?Section 7. Rate applicable in determining amount payable. The amount payable by the applicant and to be waived shall be determined as follows:

(a) Where it relates to arrears of tax which was assessed on the best of judgment due to non-production of accounts with corresponding arrears of penalty and interest, the applicant shall pay forty per cent of arrears of tax pending collection on the date of application along with interest calculated at seven and a half per cent per annum thereon and on such payment of tax, the balance of tax and interest and the entire penalty shall be waived.

(b) Where it relates to arrears of tax, including any arrears of tax accrued due to non filing of declaration forms which was in excess of the tax admitted as per the returns filed for the year with the corresponding arrears of penalty and interest, the applicant shall pay forty percent of such arrears of tax pending collection on the date of application along with interest at seven and a half percent per annum thereon and on such payment of tax, the balance of tax and interest and the entire penalty shall be waived.

(c) Where it relates to arrears of tax, which was admitted as tax due as per

returns filed for the year with corresponding arrears of penalty and interest, the applicant shall pay the entire arrears of tax pending collection along with interest at seven and a half per cent per annum and on such payment, the balance of interest and the entire penalty shall be waived.

(d) Where it relates to arrears of penalty or interest or both and where there is no corresponding arrears of tax pending collection on the date of Application, the applicant shall pay ten percent of the penalty and twenty-five percent of interest, the balance of penalty and interest shall be waived.?

?Section 8. Settlement of arrears and issue of certificate." (1) The Designated Authority shall, on being satisfied about the payment of the amount determined under sub-section (1) of Section 6, by an order, settle the arrears of tax, penalty or interest and issue a certificate in such form as may be prescribed, and thereupon, the applicant shall be discharged from his liability to make payment of the balance amount of such arrears of tax, penalty or interest. Separate certificate shall be issued in respect of each Application.

(2) The Designated Authority, for reasons to be recorded in writing, may refuse to settle the arrears of tax, penalty or interest:

Provided that no order under this sub-section shall be passed without giving the applicant a reasonable opportunity of showing cause against such refusal.?

(emphasis supplied.)

8.1. Rule 3(5) of the Tamil Nadu Sales Tax (Settlement of Arrears) Rules, 2011, reads as follows:

"Rule 3(5). If the designated authority finds any defect or omission in the application, he shall return the application for rectification of the defect or for supplying the omission within ten days from the date of receipt of the said application."

9. From the above, it is clear that as per Rule 3(5) of the Rules, if the designated authority finds any defect or omission in the applications, he shall return such applications for rectification of the defects within ten days from the date of receipt of the said application. However, in the case on hand, the first respondent, did not do so, but, without considering the said provision, had passed the impugned order and the learned Judge had also confirmed the same.

10. Admittedly, the appellant, on verification of the records, found that it had inadvertently reported the turnover as inter-state sale and hence, the appellant had also filed an appeal before the authority concerned. It is the specific plea of the appellant that had the appellant been provided with an opportunity to rectify the defects in the taxable turnover reported, the appellant would be in a position to show that the balance of the admitted tax payable should be within 10%. Though the appellant was denied to rectify the same, the learned Judge had not

considered the same and rejected the writ petition, which, in our opinion, warrants interference.

11. On this aspect alone, we find that the order of the learned Judge is liable to be interfered with and accordingly, the same is liable to be set aside.

12. In fine, the writ appeal stands allowed and the order of the learned Judge is set aside. Consequently, the writ petition filed by the appellant is allowed, setting aside the impugned order passed by the first respondent. The appellant is directed to produce the relevant working sheet before the first respondent, along with a copy of this order, within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the first respondent shall consider the same and pass appropriate orders on merits and in accordance with law, within a period of six weeks thereafter. No costs.