(2007) 06 MAD CK 0180

In the Madras High Court

Case No : Writ Petition No. 21736 of 2007 and M.P. No. 1 of 2007

Colour Sense APPELLANT

Vs

Commercial Tax Officer RESPONDENT

Date of Decision : 27-06-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu General Sales Tax Act, 1959 — Section 3(1), 3(2), 31, 3B, 3G

Citation : (2009) 23 VST 434

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

S. Manikumar, J.—The petitioner has challenged the order of assessment for 2005-2006. The firm reported a total turnover of Rs. 21,34,430.80 taxable at three per cent and the assessee produced several records in support of the returns and requested the respondent to accept the same and finalize the assessment for 2005-06.

2. The petitioner has further submitted that since they are in the business of printing, they exercised their option u/s 3G of the Tamil Nadu General Sales Tax Act, 1959 for compounded rate of tax at three per cent and submitted a letter to the Assistant Commercial Tax Officer on January 10, 2005. It is the further case of the petitioner that for assessment year 2005-06, they have submitted monthly returns before the respondent by giving details of turnover, with the payment of sales tax at three per cent compounded for the entire sale value and the same was acknowledged by the respondent. In spite of the option u/s 3G of the Tamil Nadu General Sales Tax Act, 1959, on the monthly returns submitted by the assessee, the respondent issued a pre-assessment notice and unilaterally proposed to assess the entire turnover relating to the sale of printed materials u/

s 3(1) of the TNGST Act at the rate of ten per cent instead of compounded rate of three per cent on a turnover of Rs. 14,26,163 u/s 3G of the TNGST Act. They further submitted that the petitioners are eligible for exemption in respect of turnover of Rs. 6,06,205 being sale of reading materials.

3. In reply to the abovesaid notice, the petitioners have submitted their objections stating that they are in printing business and therefore, they have legal right to exercise option u/s 3G of the TNGST Act for payment of three per cent compounded tax. The petitioners have further submitted that they bonafidely believed that the assessing officer would have dropped the proceedings or in the alternative, would summon the petitioner, to clear all the misgivings in order to enable him to pass appropriate orders.

4. The petitioner has further submitted that without considering the reply in proper perspective, the respondent has simply rejected the contention of the petitioner giving a wrong interpretation to Section 3G of the TNGST Act, 1959 and levied huge amount of tax and surcharge on the turnover of sale of printed materials and also imposed penalty.

5. Learned Counsel for the petitioner submitted that the assessment order dated March 30, 2007 is contrary to the provisions of Section 3G of the TNGST Act, 1959 and that the respondent has failed to consider that the petitioner is engaged in printing business.

6. Learned Counsel for the petitioner further submitted that the impugned proceedings of the respondent were passed mechanically without reference to the meaning imparted in Section 3G of the TNGST Act. He further submitted that the dealer is engaged only in printing materials and therefore, the respondent is estopped in invoking some other provision to levy higher rate of tax.

7. Mr. R. Mahadevan, learned Additional Government Pleader for the State, was put on notice and heard. He submitted that as against the order of assessment, there is a remedy of filing a statutory appeal to the Appellate Assistant Commissioner, Commercial Taxes III, Chennai 108 and there are no extraordinary circumstances to invoke the jurisdiction of this court. He further submitted that the assessing officer has rightly interpreted the words employed in Section 3G of the TNGST Act and found that the petitioner is not entitled to pay tax at the compounded rate u/s 3G of the TNGST Act.

8. Heard the Counsel appearing for the parties and perused the materials available on record.

Section 3G reads as follows:

Payment of tax at compounded rate by printers. - (1) Notwithstanding anything contained in Sub-section (2) of Section 3 or Section 3B, every dealer who carries on the business of printing may, at his option, instead of paying tax in accordance with Sub-section (2) of Section 3 or Section 3B, pay tax at the rate of three per cent on the total turnover.

(2) Every dealer who opts for payment of tax under Sub-section (1), shall apply to the assessing authority in such forms as may be prescribed on or before the 30th day of April of the year within thirty days of commencement of business, as the case may be, and shall payable along with such return, within such period and in such manner, as may be prescribed:

Provided that the option under this Sub-section for the year commencing on the 1st day of April 2002 shall be exercised on or before July 31, 2002.

(3) The option so exercised under Sub-section (2) shall be final for that year and shall continue for subsequent years until the dealer withdraws his option in writing on or before the 30th day of April of the subsequent year.

9. As per Section 3G of the TNGST Act, every dealer who carries on business of printing may at his option, instead of paying tax in accordance with Sub-section (2) of Section 3 or Section 3B, pay tax at the rate of three per cent on the total turnover. It is the case of the petitioner that they get raw materials for printing on "job-work basis" and sell this printed materials both within the State and inter-State. On the basis of available materials, the assessing officer has found that the assessee does not own any printing press for printing the goods which were sold in the year 2005-06, and that they are not engaged in the printing business, but are in the business of only selling printed materials. The assessing officer has also observed that the assessees, who themselves carry on the business of printing alone are eligible to claim the benefit of Section 3G of the TNGST Act.

10. There is certainly a lot of difference in business of printing and selling printed materials. If the contention of the petitioner is to be accepted, then all the dealers dealing with printed materials, would have the benefit u/s 3G of the Act. When the language of the legislation is clear, it is not permissible to give a different meaning and interpretation. Writ jurisdiction cannot be invoked to adjudicate the questions of fact as to whether the assessee was engaged in the business of printing to avail of the benefit u/s 3G of the TNGST Act. Further, if the petitioner is aggrieved by the finding of fact, statutory remedy is available u/s 31 of the TNGST Act to the Appellate Assistant Commissioner, Commercial Taxes III, Chennai 108. Writ remedy is not to by-pass the statutory remedy. Unless it is shown that the impugned order is per se without jurisdiction and patently illegal, writ petition is not maintainable. In the instant case, the assessing officer has passed the impugned order, based on the materials and, levied a higher rate of tax and penalty. The said order cannot be termed as without jurisdiction. In view of the above, this Court is of the considered view that the petitioner has not made out any strong case for entertaining the writ petition under Article 226 of the Constitution of India.

11. In the result, the writ petition is dismissed. Consequently, connected miscellaneous petition is closed.