

(2007) 04 MAD CK 0300

In the Madras High Court

Case No : Writ Petition No's. 12278 to 12280 of 2007 and M.P. No's. 1 and 2 of 2007

Elcot Power Controls Ltd.

APPELLANT

Vs

Special Committee Under Section 16-D of The TNGST Act,
1959 and Others

RESPONDENT

Date of Decision : 04-04-2007

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12(2), 12(3), 16D
Tamil Nadu Value Added Tax Act, 2006 — Section 88

Citation : (2009) 20 VST 237

Hon'ble Judges : K. Raviraja Pandian, J

Bench : Single Bench

Advocate : R. Senniappan, for the Appellant; A. Shanmugasundaram,
Government Advocate, for the Respondent

Judgement

K. Raviraja Pandian, J.—The prayer in the writ petition No. 12278 of 2007 is for the issuance of a writ of certiorarified mandamus calling for the records on the file of the second respondent in Letter No. M3/6 7302/06 dated February 28, 2007 in so far as the assessment year 2000-01 under the Tamil Nadu General Sales Tax Act, 1959 is concerned, under the Central Sales Tax Act, 1956 is concerned and quash the same and further direct the first respondent to entertain the application dated January 12, 2007 submitted by the petitioner u/s 16D of the Tamil Nadu General Sales Tax Act, 1959.

2. The prayer in the writ petition No. 12279 of 2007 is for the issuance of a writ of certiorarified mandamus calling for the records on the file of the second respondent in Letter No. M3/67302/06 dated February 28, 2007 in so far as the assessment year 2000-01 under the Central Sales Tax Act, 1956 is concerned and quash the same and further direct the first respondent to entertain the application dated January 12, 2007 submitted by the petitioner u/s 16D of the TNGST Act, 1959.

3. The prayer in the Writ Petition No. 12280 of 2007 is for the issuance of a writ of certiorarified mandamus calling for the records on the file of the second respondent in Letter No. M3/67302/06 dated February 28, 2007 in so far as the assessment year 2002-03 under the Central Sales Tax Act, 1956 is concerned and quash the same and further direct the first respondent to entertain the application dated January 12, 2007 submitted by the petitioner u/s 16D of the TNGST Act, 1959.

4. The learned Counsel for the petitioner submitted that in an identical case in W.P. No. 10416 of 2007 dated March 21, 2007 Reported as Okey Textiles Vs. Commissioner of Commercial Taxes and Another, , this Court has passed the following order:

2. It is the case of the petitioner that the petitioner was the asses-see under the provisions of the TNGST and CST Acts. For the assessment year 1996-97, the petitioner claimed exemption on the entire sales pertaining to export of hosiery garments. However, the second respondent after checking up the accounts, culled out certain values from the books of account for the sales of quota, industrial salt and carton boxes and assessed the same to tax, besides levying penalty by his assessment order dated March 15, 2002 without issuing any pre-assessment notice inviting objections to such enhancement. Such an order passed without following the mandatory provisions of issuance of pre-assessment notice as required u/s 12(2) and 12(3) of the TNGST Act. On that ground, invoking the power u/s 16D of the TNGST Act, the petitioner filed an application on January 9, 2007 before the Special Committee constituted u/s 16D of the TNGST Act for passing appropriate orders and particularly for a direction to the assessing authority to make fresh assessment to pass fresh proceedings. That application has been rejected by the Commissioner of Commercial Taxes who is one of the committee members on the premise that as per Section 88 of the Tamil Nadu Value Added Tax Act, 2006, the Tamil Nadu General Sales Tax Act, 1959 has been repealed with effect from January 1, 2007. Hence the application filed by the petitioner u/s 16D of the repealed Act cannot be entertained after January 1, 2007. The correctness of the said order is put in issue in this writ petition by contending that Section 88 of the Tamil Nadu Value Added Tax Act saved certain actions taken under the provisions of the TNGST Act, the petitioner's accrued interest and vested right cannot be divested by the repealed Act. The Repealed Act also categorically saves the rights of the petitioner under the TNGST Act.

3. The learned Counsel for the petitioner relied on the decision of the Supreme Court in Gammon India Ltd. v. Spl. Chief Secretary in [2006] 145 STC 1 wherein a similar contention has been raised and adjudication order has been passed by the Supreme Court by a ruling that since re-enactment of the A.P. Value Added Tax Act, 2005 and Section 80 of the latter Act saved the provisions of the former in toto, the rights and liabilities which had accrued or been incurred under the Andhra Pradesh General Sales Tax Act, 1957, would continue even after its

repeal. The saving Section 8 of the A.P. General Clauses Act, 1981 is in pari materia of Section 88 of the Tamil Nadu Value Added Tax Act, 2006. Hence, the decision relied on by the learned Counsel for the petitioner would squarely apply to the facts of the present case. For the assessment year 1997-98, the vested right has been accrued to the petitioner for invoking Section 16D of the TNGST Act and that cannot be divested. Hence, the reason given for rejecting the application cannot be legally sustainable and the order is set aside and remitted back to the authority concerned to reconsider the issue including the point of laches", and a similar order may be passed in this case also.

5. Following the order passed in W.P. No. 10416 of 2007 dated March 21, 2007 Reported as Okey Textiles Vs. Commissioner of Commercial Taxes and Another, , these writ petitions are disposed of by setting aside the impugned orders and remitting back to the authority concerned to reconsider the issue including the point of laches.

6. No costs. Consequently, connected miscellaneous petitions are closed,