(2003) 12 MAD CK 0138

In the Madras High Court

Case No : Writ Petition No. 36757 of 2003 and W.P.M.P. No. 44644 of 2003

Fisher Pumps (P) Ltd. APPELLANT

Vs

Commercial Tax Officer RESPONDENT

Date of Decision : 16-12-2003

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 21(3)

Citation : (2005) 139 STC 152

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : Chandran Karuppiah, for the Appellant; B. Nedunchezhian, Government Advocate (Tax), for the Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, J.—On direction, learned Government Advocate takes notice for the respondent.

2. Aggrieved by the proceedings of the respondent dated September 30, 2003, cancelling the certificate of registration granted to the petitioner under the provisions of the Tamil Nadu General Sales Tax Act, 1959 and the Central Sales Tax Act, 1956 with retrospective effect from April 1, 2003, the petitioner has filed the above writ petition to quash the same and direct the respondent to receive the applicable renewal fees and renew the certificate of registration for the assessment year 2003-2004 with effect from April 1, 2003.

3. The learned counsel for the petitioner by drawing my attention to proviso to Sub-section (3) of section 21 of the Tamil Nadu General Sales Tax Act, 1959 would contend that in the light of the said provision, the impugned order cannot be sustained. He also relied on a division Bench decision of this Court rendered in the case of Sun Gas Pvt. Ltd. v. Registrar, Tamil Nadu Taxation Special Tribunal reported in [2002] 125 STC 496.

4. In order to appreciate the said contention, it is relevant to refer the above

provision.

"Section 21(3): The certificate issued under Sub-section (2) shall be valid for one year or five years, as the case may be and shall be renewed in such manner and within such period as may be prescribed, on payment of the fee specified in Sub-section (1). The certificate shall be deemed to have been cancelled unless it has been renewed :

Provided that a registered dealer who fails to renew the certificate of registration within the prescribed period shall be permitted to renew the certificate before a further period, as may be prescribed, on payment of renewal fee and also a penalty equal to renewal fee."

5. A reading of the above proviso appended to Sub-section (3) of section 21 of the Tamil Nadu General Sales Tax Act, 1959 clearly shows that a registered dealer, who fails to renew the certificate of registration within the prescribed time is permitted to renew the certificate before a further period, on payment of renewal fee and also a penalty equal to renewal fee. It is clear from the above provision that if a registered dealer fails to renew the certificate of registration, it cannot cancel the right to carry on business issued earlier. In other words, as per the proviso, the dealer must be given an opportunity to renew the certificate for further period on payment of renewal fee and penalty as provided in the proviso. The said recourse has not been followed by the respondent before passing the impugned order.

6. In this regard, it is also useful to refer the division Bench decision of this Court referred to above Sun Gas Pvt. Ltd. v. Registrar, Tamil Nadu Taxation Special Tribunal reported in [2002] 125 STC 496. It is seen that while considering similar provision, the division Bench, after setting aside the order of cancellation, cancelling the certificate of registration of the assessee, liberty is given to the Revenue to issue show cause notice to the assessee with a direction to give him time to seek renewal and thereafter pass appropriate order.

In the light of the above referred statutory provision, the impugned order of the respondent is quashed and direction is issued to the respondent to receive the application for renewal along with fee and pass orders in accordance with law. The petitioner is granted two weeks from today for submitting his application for the abovesaid purpose. The writ petition is allowed. No costs. Consequently, connected W.P.M.P. is closed.

