(2010) 08 MAD CK 0037

In the Madras High Court

Case No : Writ Petition (MD) . No. 11659 of 2005

G. Sivanandam APPELLANT

Vs

Commercial Tax Officer RESPONDENT

Date of Decision : 24-08-2010

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12, 12
Tamil Nadu General Sales Tax Rules, 1959 — Rule 40

Citation : (2010) 36 VST 167

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : Veera. Kathiravan, for the Appellant; K. Balasubramanian, Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

S. Manikumar, J.—The Petitioner has filed the present writ petition, challenging the order of the Commercial Tax Officer, Madurai, the

Respondent herein, dated December 8, 2005 by which, he has directed the Petitioner to pay a sum of Rs. 12,113 towards arrears of tax with

interest as per Section 24(3) of the Tamil Nadu General Sales Tax Act, 1959.

2. It is the case of the Petitioner that the establishment was started as a partnership firm consisting of the Petitioner, Mr. Saravanan and Ms.

Vasanthaammal. The said partners resigned from the partnership on March 31, 2004 and therefore, the Petitioner became the sole proprietor of

the said concern. Consequently, the firm was dissolved on August 23, 2005 and virtually there was no business transaction. Thereafter, the

Petitioner started a new business in the name and style of ""Surya Marketing"" and later on the said business was also closed. Pipes India was an

Assessee under the Tamil Nadu General Sales Tax Act and the said company issued 3 cheques to the Respondent towards tax liability and the

total worth of the said company is Rs. 16,113. Out of Rs. 16,113, the Petitioner paid tax to the tune of Rs. 4,000 by way of demand draft. He

further submitted that at the time of incorporation of the said partnership firm, the Petitioner paid a sum of Rs. 2,000 as caution deposit and that it

can very well be adjusted for any amount towards payment of tax. The Petitioner further contended that the request for refund of tax to the tune of

Rs. 3,581 for the assessment year 2003-04 was pending before the Deputy Commercial Tax Officer and that the said amount can also be

adjusted towards interest. According to the Petitioner, a sum of Rs. 2,000 paid as caution deposit and the refund amount of Rs. 3,581 can be

adjusted towards the total liability of tax of Rs. 12,113. Therefore, the Petitioner made a representation, dated September 29, 2005 to the

Respondent to adjust the abovesaid amounts as against tax liability. The Respondent without considering the request in proper perspective, has

simply rejected the same. The said order is under challenge in this writ petition.

3. Assailing the correctness of the impugned order, Mr. Veera Kathiravan, learned Counsel for the Petitioner submitted that the reasons assigned

by the Respondent that two other partners have not signed in the representation dated September 29, 2005 seeking for adjustment is arbitrary, for

the reason that the other two partners had already resigned from the partnership firm and therefore, the question of consent from them does not

arise. The learned Counsel for the Petitioner further submitted that when the writ Petitioner is ready and willing to pay the resale tax and arrears of

tax, the Respondent ought to have considered the bona fides of the Petitioner and ordered for adjustment of the amount as stated supra.

According to him, the reasons for invoking the attachment proceedings and demanding interest is mala fide and therefore, the impugned order is

violative of the principles of natural justice. For the abovesaid reasons, he prayed to set aside the same.

4. Based on the counter-affidavit filed by the Assistant Commissioner (CT), Madurai, Mr. K. Balasubramanian, learned Additional Government

Pleader for the Respondents submitted that the Petitioner -firm is an Assessee in the books of the Respondent having Tamil Nadu General Sales

Tax Registration No. 4981613. The said firm consisted of partners'' viz., Mr. G. Sivanandam, the writ Petitioner and Mr. R. Senthilkumar. The

firm was assessed on a total and taxable turnover of Rs. 18,91,185 and Rs. 16,44,485, respectively for the assessment year 2002-03 as per the

assessment order dated November 10, 2004 and that the firm was in arrears of tax of Rs. 16,445 and penalty of Rs. 24,668 levied u/s 12(b) of

the Tamil Nadu General Sales Tax Act.

5. The learned Additional Government Pleader further submitted that the writ Petitioner issued three cheques for Rs. 16,113 dated August 23,

2005, August 31, 2005 and September 6, 2005, respectively, towards the arrears of M/s. Surya Marketing, drawn on Central Bank of India,

Madurai, in favour of the Respondent. The abovesaid cheques were issued by the Petitioner in the capacity of one of the partners of M/s. Surya

Marketing. However, these cheques were returned for want of funds. Hence, the Respondent has issued notice, dated September 19, 2005 to the

Petitioner ''s firm instructing them to pay the entire arrears immediately. On September 21, 2005, the Petitioner made a payment of Rs. 4,000 by

demand draft and sent a letter requesting the Respondent to adjust a refund amounting to Rs. 3,581 intended to M/s. Pipe India, Madurai and also

requested to adjust the security deposit of Rs. 2,000 paid at the time of getting registration certificate which stood in the name of the partnership

firm. The said request of the Petitioner was rejected by the Respondent for the following reasons:

(i) Regarding adjustment of refund amounting to Rs. 3,581 the said refund stands in the name of the partnership firm, M/s. Pipe India, Madurai in

which the firm consists of three partners including the Petitioner. The other partners have not given their consent to adjust the refund amount

towards the arrears due from M/s. Surya Marketing, Madurai.

(ii) Regarding adjustment of security deposit of Rs. 2,000, the Petitioner ''s firm consists of two partners. But one of the partner/the Petitioner alone

has signed in the letter. The remaining partner Thiru R. Senthilkumar has not given his willingness to adjust the security deposit towards the arrears

of tax.

6. The learned Additional Government Pleader further submitted that as per Rule 40 of the Tamil Nadu General Sales Tax Rules, 1959, every

partner shall be jointly and severally responsible for the payment of tax, fee or other leviable under the Act. The security deposit can be adjusted

towards the arrears, only if all the partners of the Petitioner ''s firm M/s. Suriya Marketting, Madurai namely, 1. Thiru. G. Sivanandam, S/o. G.

Gandhi Chettiar, 2. Thiru. R. Senthilkumar, S/o. Ramachandran Chettiar, and 3. Mrs. S. Jeyanthi, W/o. Thiru. G. Sivanandam give their consent

letter to do so. Similarly, in respect of adjustment of refund due to M/s. Pipes India, it can be adjusted only if all the partners of M/s. Pipes India,

give their consent letter to make adjustment. If the other partners are not willing either to adjust the security deposit or to adjust the refund amount,

these amounts cannot be adjusted towards arrears of tax. He further submitted that if the amounts were adjusted as per the request of the

Petitioner, the other partners have got every right to claim security deposit or refund of excess amount which stands in the name of their firm, in

future. Moreover, the two partners have resigned from the partnership firm with effect from March 31, 2004 only and the refund amount relates to

the assessment year 2003-04. There is no protection clause in the release deed dated March 31, 2004 executed by the partners of the said firm

with regard to the refund amount.

7. Therefore, learned Additional Government Pleader submitted that all the partners are having right over the refund amount for the assessment

year 2003-04 and hence consent of all the partners was insisted to adjust the refund amount against the arrears of tax. The learned Additional

Government Pleader denied the allegations that there was personal reason or mala fide against the Petitioner in rejecting the request of the

Petitioner for adjustment of the abovesaid amount towards the arrears of tax, agreed to be paid by the Petitioner. In the abovesaid circumstances,

the Respondent has submitted that there is no manifest illegality in the impugned orders warranting interference.

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

9. Pleadings and material on record show that the establishment was started as a partnership firm consisting of the Petitioner, Mr. Saravanan and

Ms. Vasanthaammal. There were arrears of tax of Rs. 16,445 and penalty of Rs. 24,668 levied u/s 12(b) of the Tamil Nadu General Sales Tax

Act. The writ Petitioner is the proprietor of the commercial concern, M/s. Pipes India who issued three cheques for Rs. 16,113 dated August 23,

2005, August 31, 2005 and September 6, 2005, respectively, towards the arrears of tax to be paid by M/s. Surya Marketing, drawn on Central

Bank of India, Madurai in favour of the Assistant Commissioner (CT), and all the cheques have been returned for want of funds. Therefore, the

Respondent has issued notice dated September 19, 2005 instructing them to pay the entire arrears immediately. As per Rule 40 of the Tamil Nadu

General Sales Tax Rules, 1959 every partner shall be jointly and severally responsible for the payment of tax, fee or other leviable under the Act.

The condition imposed by the Respondent that security deposit can be adjusted towards arrears of tax only if all the partners of the firm, M/s.

Surya Marketing, Madurai 1, namely, Thiru. G. Sivanandam, S/o. G. Gandhi Chettiar, 2. Thiru R. Senthilkumar, S/o. Ramachandran Chettiar, and

3. Mrs. S. Jeyanthi, W/o. Thiru. G. Sivanandam give their consent letter, cannot be said to be illegal or contrary to the statutory provision.

Similarly, the contention that adjustment of refund amount due to M/s. Pipes India Limited can be made only if all the partners are willing either to

adjust the security deposit or to adjust the refund amount cannot be said to be illegal for the reason that the apprehension of the Respondent that if

the amounts were to be adjusted, as per the request of the Petitioner, the other partners who have every right might claim the security deposit or

refund of excess amount which stood in the name of their firm in future, and that there would be some difficulty, cannot be said to be without any

basis. As rightly contended by the Respondent that the two partners have resigned from the partnership firm from March 31, 2004 and the refund

amount relate to the assessment year 2003-04. It is also to be noted that the contention of the Respondent that there is no protection clause in the

release deed dated March 31, 2004 executed by the partners of the said firm in regard to the refund amount and all the partners have right over

the said amount. Though the allegation of mala fide and personal motive have been attributed against the Respondent, the same is not supported by

any materials.

10. Section 24(3) of the Tamil Nadu General Sales Tax Act states that on any amount remaining unpaid after the date specified for its payment as

referred to in Sub-section (1) or in the order permitting payment in instalments, the dealer or person shall pay, in addition to the amount due,

interest at one and half per cent per month of such amount for the first three months of default and at two per cent per month of such amount for

the subsequent period of default:

Provided that if the amount remaining unpaid is less than one hundred rupees and the period of default is not more than a month, no interest shall be

paid:

Provided further that where a dealer or person has preferred an appeal or revision against any order of assessment or revision of assessment under

this Act, the interest payable under this Sub-section, in respect of the amount in dispute in the appeal or revision, shall be postponed till the

disposal of the appeal or revision, as the case may be, and shall be calculated on the amount that becomes due in accordance with the final order

passed on the appeal or revision as if such amount had been specified in the order of assessment or revision of assessment as the case may be.

11. Therefore, the demand for payment of interest as per Section 24(3) of the Tamil Nadu General Sales Tax Act, 1959 cannot be found fault

with. Though the Petitioner has contended that he has become proprietor of the concern from March 31, 2004, the fact remains that the refund

amount relates to the assessment year 2003-04. On the facts and circumstances of this case, the apprehension of the Respondent is well-founded

and reasonable.

12. In view of the above discussion, this Court is of the considered view that there is no manifest illegality in rejecting the request of the Petitioner

for adjustment towards the arrears of tax. Hence, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is

closed.

