(2008) 12 MAD CK 0343

In the Madras High Court

Case No : Writ Petition (MD) No. 11792 of 2008 and M.P. No. 1 of 2008

Gem Agencies APPELLANT

Vs

Assistant Commissioner (CT) RESPONDENT

Date of Decision : 19-12-2008

Acts Referred:

Tamil Nadu Value Added Tax Act, 2006 — Section 88(2)
Tamil Nadu Value Added Tax Rules, 2007 — Rule 4(8)

Citation : (2009) 21 VST 362

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : S. Karunakar, for the Appellant; V. Rajasekaran, Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

G. Rajasuria, J.—This writ petition has been filed to call for the records of the respondent in TIN 33353783772 dated June 4, 2007 and consequent proceedings passed in TIN 961/2007 dated October 31, 2008 and quash the same and further direct the respondent to issue a fresh certificate of registration to the petitioner under the Tamil Nadu Value Added Tax Act, 2006 with effect from January 1, 2007.

2. Heard the learned Counsel for the petitioner and also Mr. V. Rajasekaran, learned Special Government Pleader, who took notice on behalf of the respondent.

3. The learned Counsel for the petitioner by inviting the attention of this Court to the decision of this Court in Majri Steels v. Commercial Tax Officer, Tiruchy reported in [2007] 9 VST 433 would develop his arguments that the petitioner''s registration under the TNG ST Act was cancelled simply on the ground that no application was filed u/s 88(2) of the Act.

4. Perused the said judgment. The last para of the judgment is extracted hereunder for ready reference:

8. Under the Tamil Nadu Value Added Tax Act, 2006, a provision was incorporated u/s 88(2), which reads as follows:

Section 88(2).--A registered dealer, who would have continued to be so under the said Act or 1970 Act, as the case may be, had this Act not come into force, shall be a registered dealer till a fresh certificate or registration is granted to him under this Act.

It is seen that a person who was a registered dealer under the Act or Tamil Nadu Additional Sales Tax Act, 1970, was declared under the aforesaid Section 88(2) as a registered dealer under the new Act till the certificate of registration was granted to him under the Act. The Act by itself did not stipulate any consequence of a person not applying for fresh certificate of registration under the new Act.

9. It is only under the Tamil Nadu Value Added Tax Rules, 2007 that the requirement to apply in a particular format before the particular time-limit was prescribed.

10. Rule 4(8) of the Rules reads as follows:

Rule 4(8): Every registered dealer whose certificate of registration was in force under the Tamil Nadu General Sales Tax Act, 1959 shall file an application in form A along with a sufficiently stamped self-addressed envelope to the registering authority without payment of specified fee (before the 15th day of February 2007).

A reading of Section 88(2) together with Rule 4(8) shows that a time-limit for submitting an application was fixed not under the statute, but under the subordinate legislation. Neither the Act nor the subordinate legislation prescribed the consequences of the failure of a registered dealer to apply within the time-limit prescribed. If that be so, the first respondent ought not to have issued the impugned order cancelling the registration even if the petitioner had not filed an application on January 18, 2007. Under such circumstances, this writ petition deserves to be allowed. Therefore, it is allowed, the impugned order is set aside and the petitioner is directed to submit an application within a period of one week from the date of receipt of a copy of this order. Upon the petitioner submitting such an application, the first respondent shall apply the provisions of Section 88(2) of the Act and pass appropriate orders....

5. Hence, adhering to the said judgment, the impugned order of the respondent in cancelling the registration is quashed and the petitioner is directed to file application within a period of one week from the date of receipt of a copy of this order and get it processed as per law.

6. With the above direction, this writ petition is allowed. No costs.

7. Consequently, connected miscellaneous petition is closed.