(2015) 08 MAD CK 0082

In the Madras High Court

Case No : Writ Appeal Nos. 1038 to 1040 of 2015 and M.P. No. 1 of 2015

Giant Cement Trading Pvt. Ltd. and Others — APPELLANT

Vs

The Assistant Commissioner (CT) — RESPONDENT

Date of Decision : 05-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu Value Added Tax Act, 2006 — Section 19(20)

Citation : (2015) 08 MAD CK 0082

Hon'ble Judges : V. Ramasubramanian and T. Mathivanan, JJ.

Bench : Division Bench

Advocate : R.L. Ramani, SC, for the Appellant; V. Haribabu, AGP(T), for the Respondent

Judgement

V. Ramasubramanian, J.—Though the appellants in all these three writ appeals are different legal entities, challenging different orders passed by the learned Judge in their writ petitions, they have a common cause. Therefore, all of them are taken up together.

2. Heard Mr. R.L. Ramani, learned Senior Counsel appearing for the appellants. Mr. V. Haribabu, learned Additional Government Pleader (Taxes) takes notice for the respondent.

3. On 8.1.2015, the respondent issued individual notices to the appellants proposing to reverse the input tax credit on the trade discounts and other discounts received by the appellants. Thereafter, the respondent issued a notice dated 23.2.2015 calling upon the appellants to appear in person for an enquiry with a list of documents indicated in the notices. Accordingly, the appellants appeared and produced documents.

4. Thereafter, the respondent passed separate orders dated 28.5.2015, 25.5.2015 and 21.5.2015 respectively against the appellants in the above appeals. Challenging those orders, the appellants filed separate writ petitions in

W.P. Nos. 17247, 17772 and 19181 of 2015. These writ petitions were dismissed by the learned Judge by separate orders dated 17.6.2015, 29.6.2015 and 01.7.2015 even at the stage of admission, on the short ground that as against the orders of assessment, the appellants have statutory remedies of appeal. Therefore, the appellants have come up with the above writ appeals.

5. The only ground on which the appellants challenge the orders of the learned Judge is that when the issue raised before the Assessing Officer was on an interpretation of a circular issued by the Joint Commissioner and also covered by another decision in favour of one of the group companies, there was no necessity for the appellants to go to the appellate authority and exhaust all statutory remedies.

6. Reliance is placed upon a circular issued by the Commissioner of Commercial Taxes on 4.11.2013. The said circular is on the scope of interpretation of Section 19(20) of the Tamil Nadu Value Added Tax Act, 2006.

7. Section 19(20), which was introduced with effect from 19.8.2010, but which was later given retrospective effect from 1.1.2007, according to the circular of the Commissioner, indicates three steps in-built within the same for operation of the same. These three steps are as follows :

"1. Identification of cases in which huge ITC is accumulated on account of lesser sale price than the purchase price.

2. The above facts have to be ensured by verifying the purchase and sale price per unit.

3. If the above two things are found in a business concern, the quantum of ITC which exceeds the output tax shall be reversed."

8. Therefore, based upon the orders passed by the High Court on 17.7.2013 in a batch of writ petitions upholding the Constitutional validity of Section 19(20) and also based upon the representations of the association of manufacturers and traders, the Commissioner has directed in his circular that the provisions of Section 19(20) have nothing to do with the levy of tax on the discount, which has to be dealt with independently as per the provisions of the Act.

9. It appears that following the above circular, one of the sister companies of the appellants by name M/s. Sree Laxmi Traders appeared to have had the benefit, in respect of the assessment years 2007-2008, 2008-2009, 2009-2010 and 2010-2011. The copies of the assessment orders passed on 31.3.2015 in respect of M/s. Sree Laxmi Traders for the aforesaid assessment years, are filed before us. Those orders show that the Assistant Commissioner (CT) in Surapattu Assessment Circle had granted the benefit of the circular to one of the sister concerns.

10. In such circumstances, the only contention raised by the appellants in their writ petitions and in these writ appeals is that two different assessing officers

cannot take two different views in respect of companies, which form part of the same group companies.

11. This is a contention, which, in our considered view, entitles the appellants to by-pass the alternative remedy of appeal.

12. It is true that in exercise of jurisdiction under Article 226, this Court would not, as a matter of course, allow persons to by-pass the alternative remedy of appeal. But, in cases of this nature where the assessees claim the benefit of a circular and also claim that in respect of one of the companies forming part of the very same group, a different view has been taken by another assessing officer, it is not worth driving the parties to avail the alternative remedy.

13. In the objections submitted on 28.1.2015 to the notice issued on 8.1.2015, the appellants have brought this fact to the notice of the respondent. But, in the orders impugned in the writ petitions, the respondent has not taken note of the same. Therefore, we are of the considered view that the impugned orders could be set aside and the matter sent back to the respondent for a fresh consideration.

14. Accordingly, the writ appeals are allowed and the orders of the learned Judge are set aside. The writ petitions are allowed and the impugned assessment orders passed by the respondent are set aside. The matter is remitted back to the respondent. The respondent shall take into account the circular of the Commissioner dated 4.11.2013 and the orders of assessment dated 31.3.2015 passed in respect of M/s. Sree Laxmi Traders and pass orders afresh within a period of six weeks. No costs. Consequently, the above M.Ps. are closed.