(2011) 01 MAD CK 0006

In the Madras High Court

Case No : Writ Petition (MD) No. 5384 of 2008 and M.P. (MD) No. 1 of 2008

Global Poly Bags Industries (P) Ltd. — APPELLANT

Vs

The Appellate Assistant Commissioner (C.T.) and Deputy Commercial Tax Officer — RESPONDENT

Date of Decision : 05-01-2011

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 10, 12(3), 16(1), 16(2)

Citation : (2011) 41 VST 194

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : M. Md. Ibrahim Ali, for the Appellant; R. Balasubramanian, Spl. Govt Pleader, for the Respondent

Final Decision : Allowed

Judgement

M. Venugopal, J.—The Petitioner has filed the present writ petition seeking for a Writ of Certiorari in calling for the records relating to the

Pre Revision Notice in Asst.5720959/97-98 dated 24.04.2008 issued by the second Respondent, received by the Petitioner on 05.05.2008 and

to quash the same.

2. According to the learned Counsel for the Petitioner, the Petitioner as against the revision orders passed by the Assessing Officer in assessment

order 5720959/1997-98 dated 27.12.2006, has preferred an appeal before the First Respondent/Appellate Assistant Commissioner(C.T)

Viruthunagar, and the First Respondent/Appellate Assistant Commissioner(C.T) Viruthunagar, in his order dated 11.03.2008, has dismissed the

appeal on the turnover of Rs. 19,41,397/- (Rupees Nineteen Lakhs Forty One Thousand Three Hundred and Ninety Seven only) mentioning that the Petitioner has failed to discharge the burden of proof on him as per Section 10 of the TNGST Act, 1959.

3. It is the further contention of the learned Counsel for the Petitioner that as regards levy of penalty of Rs. 92,568/- levied by the Assessing

Officer as per Section 12(3)(b) of TNGST Act, 1959, the First Respondent/ Appellate Assistant Commissioner (C.T) Viruthunagar, in his appeal

order dated 11.03.2008, remanded the issue to the Assessing Officer for fresh disposal.

4. The learned Counsel for the Petitioner brings it to the notice of this Court that the Petitioner has projected an appeal in MTA. No. 106 of 2008

on the file of Sales tax Appellate Tribunal (AB)Madurai, wherein, the Petitioner has disputed the tax of Rs. 77,656/- (Rupees Seventy Seven

Thousand Six Hundred and Fifty Six only) as well as the penalty of Rs. 92,568/- (Rupees Ninety Two Thousand Five Hundred and Sixty Eight

Only) levied by the Assessing Officer.

5. Conversely, it is the contention of the learned Government Advocate for the Respondents 1 and 2 that MTA No. 106 of 2008 filed by the

Petitioner is pending before the Sales Tax Appellate Tribunal (AB) Madurai when the order of the First Appellate Authority under challenge before

the State Appellate Tribunal (AB) Madurai, the writ petition filed by the Petitioner against the order giving effect to remand back to the said order,

is not maintainable. Further, it is the submission of the Respondents 1 and 2 that what has been issued is only Pre Revision Notice dated

24.04.2008 passed by the Second Respondent and therefore the writ petition is not maintainable.

6. It is not disputed that as on date, the Appeal filed by the Petitioner in MTA No. 106/2008 on the file of the Sales Tax Appellate Tribunal

(AB)Madurai is pending and the same has not yet been disposed of.

7. The core contention advanced on behalf of the Petitioner is that when an appeal in MTA No. 106/2008 filed by the Petitioner in regard to the

levy of tax of Rs. 77,656/- (Rupees Seventy Seven Thousand Six Hundred and Fifty Six only) and the penalty levied for Rs. 92,568/- (Rupees

Ninety Two Thousand Five Hundred and Sixty Eight Only) are pending before the Sales Tax Appellate Tribunal,(AB)Madurai, then it is not open

to the Second Respondent/Deputy Commercial Tax Officer, Viruthunagar, to issue

Pre Revision Notice dated 24.04.2008 in reference Asst. No.

5720959/97-98 and the same is perse illegal in the eye of law.

8. In the Pre Revision Notice dated 24.04.2008, issued by the Second Respondent/Deputy Commercial Tax Officer-I, Virudhunagar, in Asst. No.

5720959/97-98 in page No. 2 it is mentioned among other things as follows:

Penalty:

As had been rightly contended by the Appellant the assessing authority has misquoted Section 12(3) in the matter of levy of penalty as against

Section 16(2) of the TNST Act,1959. However, the wrong quoting of section would not vitiate the proceedings ipso facto when he is adequately

vested with power to levy of penalty u/s 16(2) of the TNGST Act, 1959. The assessing authority had clearly established that the Appellant had

suppressed assessable turnover from the return filed under the TNGST Act, 1959. But for verification the suppression would not have come into

light. Therefore, for the willful non-disclosure of the assessable turnover in the return filed the Assessing authority is well justified in levying penalty

on the tax due on the suppressed turnover at 150%. Therefore, the levy of penalty at 150% on the suppressed tax due is called for. However, as it

is found that the levy of penalty is not in accordance with law the provisions of Section 16(2), the penalty levied is set aside and remanded for fresh

disposal.

The Appellant is directed to produce books of accounts, etc., to the Assessing Officer within 30 days from the date of a call from the Assessing

Officer, failing which Assessing Officer will be at liberty to pass appropriate order on the basis of the records Available and on merits.

5. You have filed monthly return for the year 1997-98 and the reported Nil turnover. No tax has been paid as per return. Again at the time of

revision of assessment made on 04.02.2003, no tax was paid by you. As the revision of assessment was made u/s 16(1) of the TNGST Act,1959,

it is also proposed to fix the penalty of Rs. 1,16,484/- being 150% of the tax due on the willful non-disclosure of taxable turnover u/s 16(2) of the

TNGST Act,1959 as the suppression of sales had already been proved as willful non-disclosure.

Tax due on the willful non-disclosure - Rs. 77,656/

Tax paid as per return - Rs. Nil

Difference for calculation of penalty u/s 16(2) of the Act - Rs. 77656 - 100% Penalty

proposed at 150% as per Section 16(2)(c) of the Act - Rs. 116484/

6. Objections, if any, against the above proposals may be filed in writing with relevant records before me in my office within office hours within

thirty days (as directed in the order of the Appellate Assistant Commissioner (CT) Virudhunagar) of receipt of this notice, failing which order will

be passed as proposed above.

Deputy Commercial Tax Officer-I

Virudhunagar

9. Inasmuch as the appeal filed by the Petitioner in MTA No. 106/2008 before the Sales tax Appellate Tribunal (AB)Madurai is pending as on

date and since the same has not been disposed of till date, this Court is of the considered view that it is not open to the Second

Respondent/Deputy Commercial Tax Officer-I, Viruthunagar, to issue the Pre Revisional Notice dated 24.04.2008 claiming tax due on the willful

non disclosure at Rs. 77,656/- and the penalty proposed at 150% as per Section 16(2) of the Act at Rs. 1,16,484/- and the same is perse illegal

and invalid one. Resultantly, this Court exercises its inherent power under writ jurisdiction and sets aside the Pre Revision Notice dated

24.04.2008 issued by the Second Respondent and allows the writ petition to prevent an aberration of justice.

10. In the result, the writ petition is allowed. The order of the Second Respondent/Deputy Commercial Tax Officer-I, Viruthunagar, dated

24.04.2008 is hereby set aside. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.