(2002) 10 MAD CK 0207

In the Madras High Court

Case No : Writ Petition No. 14418 of 2000 and W.M.P. No''s. 20873 and 20874 of 2000

Gupta Exports APPELLANT

Vs

The Principal Chief Conservator of Forests and The District Forest Officer RESPONDENT

Date of Decision : 25-10-2002

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2002) 10 MAD CK 0207

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : K.S. Natarajan, for Anand Das Gupta, for the Appellant; Selvi George, Government Advocate for V.S. Sethuraman, for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—In this writ petition prayer has been made for quashing the order dated 23.1.2000 in C.No.5804/99/S and forbear the respondents from making any claim or demand from the petitioner for the payment of Sales Tax, demurrage charges and penal interest in respect of purchase of 15 Mts of sandalwood made by the petitioner in the auction dated 28.4.1999.

2. Petitioner is a partnership firm engaged in the processing and business of sandalwood and also the export of sandalwood. The petitioner claims that he had received a specific export order dated 20.12.1998 for sandalwood chips to be exported to Hong Kong. The petitioner had participated in the auction dated 28.4.1999 conducted by the second respondent as per the notice dated 21.3.1999. The petitioner was declared as a successful bidder in respect of 15 Metric Tonnes of sandalwood for a bid amount of Rs.51,29,000/-. The petitioner paid a sum of Rs.1,00,000/- by way of Earnest Money deposit and a further a sum of Rs.10,36,500/- representing 20% of the sale amount. The petitioner claims that such purchase was made for the purpose of meeting the export

demand and as such the petitioner was exempted from paying sales tax as per the provisions contained in Section 5(3) of the Central Sales Tax Act. However, while intimating that the auction has been confirmed by order dated 16.5.1999, which was received by the petitioner on 29.5.1999, the petitioner was called upon to pay certain amount which included a sum of Rs.4,11,346/- towards sales tax. However, since the second respondent insisted for payment of entire amount including the sum indicated towards sales tax liability, the petitioner had filed W.P.No15094/99 which was disposed of by a learned single Judge by order dated 14.9.1999. It was observed in the aforesaid matter as follows :-

" . . . In the above circumstances, the claim of the petitioner that he is entitled for exemption of Sales Tax if it is made for the purpose of export sale and this particular quantity is entitled for exemption can be considered by the District Forest Officer on merits and in accordance with law within a period of one month from the date of receipt of a copy of this order."

3. Even though the aforesaid order was passed after hearing the Special Government Pleader, who had accepted notice on behalf of the District Forest Officer, on 15.9.1999, the very next day, the District Forest Officer called upon the petitioner to settle the amount within 7 days indicating that on failure to do so, action will be taken to forfeit the amount already deposited. Subsequently, a telegram was also issued by the District Forest Officer. On receipt of the aforesaid telegram, a reply telegram was sent by the petitioner wherein the attention of the District Forest Officer was brought to the order passed by the High Court in W.P.No.15094 of 1999.

On 29.9.1999, the District Forest Officer passed the following order :

" . . . As per the Hon''ble High Court, Chennai order dt: 14.9.99 in WMP No.21807 and 21808 /99 in W.P.No.15094/99, you are requested to pay the balance sale amount, penal interest, Demurrage etc., as per the Sale condition.

Further you have to produce Foreign Buyer agreement executed before the sale date. For availing exemption of payment of 8% Sales Tax or to produce Bank Guarantee for the same amount valid for one year.

An undertaking letter should also be given stating that the Export records should be produced within three months.

You are requested to complete the above formalities and lift the wood immediately. . . ."

On receipt of the aforesaid letter, the petitioner immediately wrote back on 4.10.1999 again referring to the order passed by the High Court stating that the demand regarding penal interest and demurrage was not justified. The District Forest Officer gave a reply dated 2.11.1999 stating that the request to release the sandalwood without payment of penal interest and demurrage was not acceptable. Subsequently, the District Forest Officer again wrote a letter directing the petitioner to pay sales tax due, penal interest and demurrage charges along with other dues. The petitioner again gave a reply reiterating about the High Court''s order and the fact that the petitioner had participated in the auction for meeting the export order. Such correspondence continued and ultimately on 23.1.2000, an order was passed forfeiting the amount already deposited. The aforesaid order is being challenged in this writ petition with a consequential prayer that the second respondent should release the goods without insisting upon payment of penal interest and demurrage charges.

4. Learned counsel appearing on behalf of the petitioner invited my attention to the letter dated 16.9.1998 sent by the special Commissioner and Commissioner of Commercial Taxes to the Principal Chief Conservator of Forests in connection with the question of payment of sales tax in auction sale of sandalwood. Paragraph 4 of the letter is as follows :-

" . . . In respect of the claim of exemption u/s 5(3), that claim has to be made by the Forest Department in the A-10 returns filed enclosing documentary evidence. As a pre-caution, the Forest Department may accept bank-guarantee at the time of auction sale from the successful bidders who claim that the purchase was for the purpose of fulfilling prior agreement from the foreign buyer. A time-limit of ''3'' months may be fixed by the Forest Department to get documentary evidence from the buyer that the goods were actually exported along with Form ''H''. When such Form- ''H'' and documents were presented to the Assessing Officer by the Forest Department and are found to be in order by the Assessing Officer, exemption can be granted on such transactions and the Forest Department may return the bank-guarantee. Wherever there is no proof to claim the exemption provided u/s 5(3) of the Central Sales Tax Act, the Forest Department may encash the bank guarantee and remit the amount to the Commercial Taxes Department. . ."

5. In view of the aforesaid clarification issued by the Commercial Taxes Department, it was not proper on the part of the District Forest Officer to insist upon payment of Rs.4,11,346/- towards sales tax. On the other hand only the petitioner should be called upon to furnish bank guarantee. Insistence on the part of the District Forest Officer on payment of sales tax dues had forced the petitioner to approach this Court and this Court had given a direction that such question should be considered by the District Forest Officer. The District Forest Officer instead of considering the question as indicated by the High Court, not only insisted for payment of sales tax but also directed the petitioner to pay penal interest and demurrage charges and ultimately such action resulted in further correspondence between the parties. The petitioner was all along requesting the District Forest Officer not to insist upon penal interest and demurrage charges and regarding sales tax charges. Ultimately the District Forest Officer passed the order forfeiting the amount already deposited.

6. Learned counsel appearing for the respondents has contended that the petitioner is seeking to enforce a contractual right and the jurisdiction under Article 226 of the Constitution cannot be exercised for this purpose.

7. Learned counsel appearing for the petitioner in order to combat the aforesaid conclusion has placed reliance upon the Full Bench decision of this Court reported in 1998 1 M.L.J. 1 (THE ALUMINIUM INDUSTRIES LIMITED, MADRAS v. THE MINERALS AND METALS TRADING CORPORATION OF INDIA LIMITED AND OTHERS). Apart from the fact that the ratio of the aforesaid Full Bench decision is applicable, strictly speaking, the present writ petition is against the order of forfeiture passed by the second respondent and for a consequential relief and it cannot be said that the petitioner is seeking merely to enforce its contractual right.

8. In the peculiar facts and circumstances of the case, the order of the District Forest Officer, the second respondent, in directing forfeiture of the amount already deposited and insisting on payment of penal interest and demurrage charges does not appear to be justified. It is true that the petitioner could have paid other amount payable, however, since the correspondence indicated that the petitioner should pay the sale tax dues, penal interest and demurrage charges, it cannot be said that the petitioner had wilfully defaulted in making payment as he was all along protesting about the liability to pay sales tax and also requesting for waiver of penal interest and demurrage charges.

9. In a similar matter, a Division Bench of this Court in W.A.Nos.94 to 96 of 2000, arising between a sister concern of the petitioner and the Forest Department, had passed an order directing the appellant therein to renew the bank guarantee and directing the Forest Department to release the goods without claiming any demurrage or penal charges.

10. Keeping in view the ratio of the aforesaid decision and the facts and circumstances of the case, the present writ petition is disposed of with the following directions :-

(1) The direction regarding forfeiture is quashed.

(2) The petitioner should furnish a bank guarantee to meet the eventual liability of sales tax, if any. Such bank guarantee should be for a period of one year.

(3) The petitioner is further required to make payments as indicated in the confirmation letter except the direction regarding payment of sales tax. The bank guarantee and such payments should be made within a period of one month from the date of communication of the order.

(4) If the aforesaid conditions are complied with by the petitioner, the respondents should deliver the goods within a period of one month from the date of furnishing the bank guarantee and other amount payable by the petitioner. The respondents should not claim any demurrage or penalty.

(5) The petitioner is required to establish before the concerned authority that it is not liable to pay sales tax u/s 5(3) of the Central Sales Tax Act with respect to sandalwood purchased pursuant to the auction dated 28.4.1999. This should be done within a period of five months from to-day. If the petitioner is not able to

establish that it is entitled to the benefit of exemption of sales tax, the respondents may enforce the bank guarantee and realise the amount after the lapse of the aforesaid period of five months. On the other hand, if the petitioner is able to establish its case that it is not liable to pay sales tax, the bank guarantee should be returned to the petitioner.

11. Subject to the aforesaid directions, the writ petition is accordingly allowed. There would be no order as to costs. Consequently, WMP.Nos.20873 & 20874 of 2000 are closed.

