
(2010) 03 MAD CK 0266

In the Madras High Court

Case No : Writ Petition No. 2104 of 2009

Hydro Electrical Systems

APPELLANT

Vs

Commercial Tax Officer

RESPONDENT

Date of Decision : 15-03-2010

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 16, 16(1), 7C, 7C(4)

Citation : (2010) 34 VST 160

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : K. Soundararajan, for the Appellant; Haja Nazruddin, Special Government Pleader (Taxes), for the Respondent

Final Decision : Allowed

Judgement

V. Dhanapalan, J.—The petitioner has filed this writ petition challenging the proceedings of the respondent dated November 21, 2008 in TNGST No. 0981689/2005-06.

2. Heard the arguments of Mr. K. Soundararajan, the learned Counsel for the petitioner and Mr. Haja Nazruddin, the learned Special Government Pleader (Taxes) representing the respondent and perused the records.

3. The petitioner is engaged in the business of contract of supply, erection, testing and commissioning of pumps and registered dealer on the file of the respondent herein both under the Tamil Nadu General Sales Tax Act, 1959 (hereinafter called "the TNGST Act") and the Central Sales Tax Act, 1956 (hereinafter called "the CST Act").

4. It is contended by Mr. K. Soundararajan, the learned Counsel appearing for the petitioner, that for the assessment year 2005-06, the petitioner had exercised the option of paying the tax at compounding rate as required u/s 7C of the TNGST Act by filing the return in form AI and once the compounding option was accepted by the Department, a compounding order was also passed to that

effect. Therefore, the transactions of the petitioner will not come under the category of "works contract" thereby the respondent to assume jurisdiction to revise the assessment and levy tax on the transaction as ordinary sale by invoking the provisions of Section 16 of the TNGST Act does not arise. The reliance placed by the respondent on the judgment of the Supreme Court in *State of Andhra Pradesh v. Kone Elevators (India) Ltd.* reported in [2005] 140 STC 22 is not attracted. On the contrary, the judgment of the Supreme Court in *State of Tamil Nadu v. Devendran & Company* reported in [1996] 103 STC 95 confirming the judgment of the Division Bench of this Court in *Deputy Commissioner of Commercial Taxes, Vellore v. Devandran & Co.* [1981] 47 STC 264 will squarely apply.

5. The learned Special Government Pleader appearing for the respondent submitted that the reassessment was proposed to be done not under a different head but it was assessed at a rate lower than at which it is assessable. It is also submitted that the present notice is a show-cause notice and the petitioner should give her reply and if any adverse order is passed, proper forum can be approached.

6. The learned Counsel appearing for the petitioner stated that pursuant to the notice, the petitioner has produced the order of works contract and also submitted the necessary form A and he also drew the attention of this Court to the provisions contained u/s 7C(4) of the TNGST Act, which reads as follows:

7C. (4) A dealer, exercising option under Sub-section (1) shall, so long as the option remains in force, not be required to maintain accounts of his business under this Act or the Rules made thereunder except the records in originals of the (works contract), extent of their execution and payments received or receivable in relation to such (works contract), executed or under execution.

7. The learned Counsel for the petitioner also relied upon the provisions contained before the amendment in Section 7C(4) of the TNGST Act, which reads as follows:

(4) A dealer, exercising option under Sub-section (1) shall, so long as the option remains in force, not be required to maintain accounts of his business under this Act or the Rules made thereunder except the records in originals of the civil works contract, extent of their execution and payments received or receivable in relation to such civil works contract, executed or under execution.

8. A Division Bench of this Court in *Deputy Commissioner of Commercial Taxes, Vellore v. Devandran & Co.* [1981] 47 STC 264 dealt with the application of Section 16 of the TNGST Act, wherein it was held that if earlier assessment is made on a particular percentage and subsequently, if the assessing authority wanted to reopen the assessment by taking away part of the sales turnover from the turnover already assessed for finding out the corresponding purchase turnover of raw hides and skin and subject it to a tax at 13 per cent by invoking Section 16 of the TNGST Act, the same power is not available to the authorities.

The funding of the Tribunal was affirmed by the Division Bench in the following lines (at page 265):

In this case, as we pointed out already and as admitted, the entire sales turnover relating to the tanned hides and skins had been assessed at 1 1/2 per cent under item 7(b) and the sales turnover was assessable only under that item. Only if the whole or any part of this turnover had escaped such assessment, the whole or any part of the turnover can be said to have been assessed at a lower than the rate at which the same was assessable so as to attract the provisions of Section 16(1)(b). That not being the case, the order of the Tribunal cannot be said to be erroneous in law and consequently the tax revision case is dismissed.

9. The said judgment was affirmed by the Supreme Court in *State of Tamil Nadu v. Devendran & Company* [1996] 103 STC 95.

10. The learned Counsel also produced the work order issued by Indian Oil Corporation in favour of the petitioner, which was also submitted to the respondent. Therefore, the only question that remains for consideration is whether the respondent had power u/s 16 of the TNGST Act to reopen the assessment on the basis of the judgment of the Supreme Court in *State of Andhra Pradesh v. Kone Elevators (India) Ltd.* [2005] 140 STC 22. The reliance placed upon the said judgment of the Supreme Court in *Kone Elevators*" case [2005] 140 STC 22 is totally misconceived as in the present context, the petitioner has agreed to compound rate by paying the tax in terms of Section 7C of the TNGST Act and also filed the returns in form A1. In such a case, the question of revising the compounding order does not arise especially when a dealer is exercising option in payment of rates in compound rate and the petitioner was also made to pay tax at four per cent on the entire contract value. Section 16 of the TNGST Act is not intended to withdraw the said option exercised by the petitioner-dealer.

11. In the light of the above and in view of the judgment of the Supreme Court in *Devendran & Company* case [1996] 103 STC 95, the impugned order dated November 21, 2008 is set aside and the writ petition stands allowed. No costs. Consequently, connected M. P. No. 1 of 2009 is closed.