(2015) 10 MAD CK 0198

In the Madras High Court

Case No : W.P. No. 28162 of 2015 and M.P. No. 1 of 2015

Indo Tech Transformers Ltd. APPELLANT

Vs

The Appellate Deputy Commissioner (CT) and Others RESPONDENT

Date of Decision : 16-10-2015

Acts Referred:

Tamil Nadu Value Added Tax Act, 2006 — Section 84

Citation : (2015) 10 MAD CK 0198

Hon'ble Judges : R. Mahadevan, J.

Bench : Single Bench

Advocate : K. Soundararajan, for the Appellant; S. Manoharan Sundaram, Addl. Govt. Pleader, for the Respondent

Judgement

R. Mahadevan, J.—This writ petition is filed challenging the order of the 2nd respondent in CST No. 636963/2012-2013 dated 17.01.2014 and the consequential proceedings of the 1st Respondent in N. Dis. No. 766/2015/A1 dated 12.08.2015 and direct the 3rd respondent to grant exemption by accepting the statutory forms.

2. The petitioner is a manufacturer of Transformers and Assessee on the files of 3rd respondent under the TNVAT Act and CST Act and effected sales within the State as well as outside the State. During the year 2012-2013, the petitioner had effected Inter State Sales and direct export sales.

3. It is the case of the petitioner that the petitioner is entitled for concessional rate of taxes of 2% on production of C-Forms. Since the other state dealers had not furnished the C-Form declaration in time, the same was not able to be produced before the second respondent for finalising the assessment. Further, the petitioner was also not in a position to produce the export related documents so as to claim exemption in respect of the assessment year. On the failure of the petitioner to produce the required documents, the 2nd respondent proceeded to assess the turn over at 14.5% as well as 5% and passed the order of assessment in CST No. 636963 for the assessment year 2012-13 dated 17.1.2014. After such

an order of assessment, the petitioner was able to collect necessary C-Forms and other export documents and hence, the petitioner approached the 3rd respondent with the available C-Forms and sought for revising the assessment order u/s. 84 of TNVAT Act since production of C-Form is permitted even after passing the order of assessment. Further, the petitioner was under the bona fide belief that once a revised order has been passed, an appeal could be filed before the appellate authority in respect of the remaining C- Forms. Hence, he sought for rectification of the order earlier passed and accordingly, the order impugned came to be passed invoking Section 84 of the TNVAT Act. Since the documents were not available with the petitioner, the petitioner was not able to challenge the said order in time and the appeal filed was rejected by the Appellate Authority in N. Dis. No. 766/2015/A1 dated 12.08.2015 on the ground that the appeal was filed belatedly. Hence, the petitioner is before this Court.

4. According to the learned counsel for the petitioner, the rectified order has been challenged well within the time limit, but the Appellate Authority erroneously rejected the same. Now, the learned counsel for the petitioner submitted that without considering the reasonable cause and submissions raised in the appeal, the 1st respondent, dismissed the appeal on 12.08.2015 stating the reason of delay and hence he has no jurisdiction to entertain the appeal.

5. The learned Counsel for the petitioner would further submit that the impugned ex parte assessment order passed by the 2nd respondent is ex facie illegal, erroneous in law and violative of principles of natural justice, since the same has been passed without granting sufficient time. Hence, he pleaded that the same is liable to be quashed.

6. The learned Additional Government Pleader (Taxes) submitted that the orders came to be passed only after issuing notice, sufficient time was also given and the petitioner did not utilise the same by production of ''C'' forms so as to get concessional levy. Hence, he sought to sustain the assessment order.

7. Heard both sides.

8. The petitioner herein challenged the assessment order dated 17.1.2014 before the 1st respondent by remitting the mandatory pre-deposit amount, however, stating that the appeal is barred by limitation, the same was rejected. The issue involved in this case is non production of ''C'' forms related to interstate sales as well as export documents before the 2nd respondent who passed the assessment order dated 17.01.2014. The specific case of the petitioner is that due to business fluctuations, the ''C'' forms and other export documents were not able to be produced before the 2nd respondent and presently the petitioner is having all those documents and only requires an opportunity to place the same before the 3rd respondent who is the present assessing authority. What is sought to be placed are nothing but statutory forms and hence this Court finds it appropriate to provide yet another opportunity to the petitioner.

9. At this juncture, the learned Additional Government Pleader fairly submitted

that the 3rd respondent may be directed to issue fresh notice by granting time and on receipt of the same, the petitioner may be directed to submit C- Forms as well as export documents and on receipt of the same, the 3rd respondent may be directed to consider the same and pass appropriate orders within a time frame.

10. In view of the submissions made by the learned counsel for the petitioner and the learned Additional Government Pleader (Taxes), this Court is of the view that the impugned order passed by the 2nd respondent dated 17.01.2014 is liable to be set aside and the petitioner must be given an opportunity to produce the ''C'' forms.

11. In view of the same, by quashing the impugned order of the 2nd respondent dated 17.01.2014, the matter is remitted back to the 3rd respondent for passing orders afresh. The 3rd respondent is directed to issue fresh notice within a period of two weeks from the date of receipt of a copy of this order and on receipt of such notice, the petitioner is directed to produce ''C'' forms within a period of two weeks from the date of receipt of such notice and on receipt of the same, the 3rd respondent is directed to consider the same and pass appropriate orders, on merits and in accordance with law, within a period of four weeks thereafter.

12. The writ petition is disposed of with the above directions. No costs. Connected miscellaneous petitions are closed.

