

(2009) 01 MAD CK 0296

In the Madras High Court

Case No : Writ Petition No"s. 859 and 860 of 2009 and M.P. No"s. 1 and 1 of 2009

Kanchi Bakers and Sweets

APPELLANT

Vs

Assistant Commissioner (CT)

RESPONDENT

Date of Decision : 28-01-2009

Acts Referred:

Tamil Nadu Value Added Tax Act, 2006 — Section 21, 22, 22(2), 22(4), 22(5)

Citation : (2009) 23 VST 283

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : P. Rajkumar, for the Appellant; A.C. Mani Bharathi, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

V. Ramasubramanian, J.—The petitioner has come up with the present writ petitions, challenging the assessment orders passed u/s 25 of the Tamil Nadu Value Added Tax Act, 2006, hereinafter referred to as "the Act", for the assessment years 2006-07 and 2007-08.

2. Heard Mr. P. Rajkumar, learned Counsel appearing for the petitioner and Mr. A.C. Mani Bharathi, learned Government Advocate, appearing for the respondent.

3. By an order dated November 27, 2008, the respondent provisionally assessed the total and taxable turnover of the petitioner for the year 2006-07 u/s 25 of the Act at the rate of 12.5 per cent on the sales turnover. Similarly, by another order of the same date, the respondent made a provisional assessment for the year 2007-08, u/s 25, assessing the dealer at the rate of 12.5 per cent on the sales turnover.

4. The petitioner has come up with a challenge to these assessment orders on the ground that the occasion to invoke Section 25 did not arise in these cases and that the respondent ought to have passed a final assessment order in terms

of Section 22. However, it is contended by the learned Government Advocate that the orders impugned in these writ petitions, are actually final assessment orders though the word "provisional" is wrongly mentioned therein. Therefore, it is contended by the learned Government Advocate that the petitioner should only file an appeal against the impugned orders.

5. I have carefully considered the rival submissions.

6. In both the cases, the orders impugned are identical in their wordings. Therefore the relevant portion of one order is extracted for the purpose of testing the correctness of the rival contentions. The order relating to the assessment year 2006-07 reads as follows:

The dealers have reported a total and taxable turnover of Rs. 17,72,690 in the monthly return filed for the year 2006-07, January 2007 to March 2007.

It is provisionally proposed to assess the dealers for the year 2006-07 at the rate of 12.5 per cent on the sales turnover of Rs. 17,72,690.

Notices were issued on September 4, 2008 and September 29, 2008. The notice dated September 4, 2008 was served on to the dealers on September 9, 2008. The second notice dated September 29, 2008 was served onto the dealers even No. and date.

The dealers vide their letter dated October 10, 2008, have requested 15 days time to submit their objection. So far they have neither filed their objection nor paid the due.

In view of the above, it is construed that the dealers have none to offer. Hence the dealers are provisionally assessed u/s 25 of the VAT Act, 2006, as detailed below.

7. Section 22 of the Tamil Nadu Value Added Tax Act, 2006, reads as follows:

Section 22. Procedure to be followed by assessing authority. - (1) The assessment in respect of the dealer shall be on the basis of return relating to his turnover submitted in the prescribed manner within the prescribed period.

(2) The assessing authority shall accept the returns submitted for the year, by the dealer, if the returns are accompanied by the proof of payment of tax and the documents prescribed, and on such acceptance, the assessing authority shall pass an assessment order.

(3) Notwithstanding anything contained in Sub-section (2), not exceeding twenty per cent of the total number of such assessment shall be selected by the Commissioner in such manner as may be prescribed for the purpose of detailed scrutiny regarding the correctness of the returns submitted by the dealer and in such cases, revision of assessment shall be made, wherever necessary.

(4) If no return is submitted by the dealer for that year, the assessing authority shall, after making such enquiry as it may consider necessary, assess the dealer

to the best of its judgment, subject to such conditions as may be prescribed:

Provided that before taking action under this sub-section, the dealer shall be given a reasonable opportunity of being heard.

(5) In addition to the tax assessed under Sub-section (4), the assessing authority shall, in the same order of assessment passed under Sub-section (4) or by a separate order, direct the dealer to pay by way of penalty, a sum which shall be, in the case of failure to submit return, one-hundred-and-fifty per cent of the tax assessed:

Provided that no penalty under this Sub-section shall be imposed after the period of five years from the date of assessment order under this Section unless the dealer affected has had a reasonable opportunity of showing cause against such imposition.

(6)(a) Any dealer assessed under Sub-section (4) may, within a period of thirty days from the date of service of the assessment order, apply to the assessing authority for reassessment, along with the correct and complete return as prescribed. On such application, the assessing authority shall, if it is satisfied that the failure to submit the return in time was due to reasons beyond the control of the applicant, cancel the assessment made and make a fresh assessment on the basis of the return submitted:

Provided that no application shall be entertained under this Sub-section unless it is accompanied by satisfactory proof of the payment of tax admitted by the applicant to be due or any such instalment thereof as might have become payable, as the case may be.

(b) If the amount of tax on the basis of the cancelled assessment has already been collected and if the amount of tax arrived at as a result of the fresh assessment is different from it, any amount over paid by the dealer shall be refunded to him without interest, or the further amount of tax, if any," due from him shall be collected in accordance with the provisions of this Act, as the case may be.

(c) Penalty, if any, imposed and collected under Sub-section (5), shall be refunded to the dealer without interest on cancellation of the order of original assessment.

8. Section 25(1) of the Act, read as follows:

Section 25. Procedure to be followed in assessment of certain cases.-(1) If no return is submitted by the dealer u/s 21 within the prescribed period, or if the return submitted by him appears to the assessing authority to be incomplete or incorrect, the assessing authority may, after making such enquiry as it considers necessary, determine the tax payable by the dealer to the best of its judgment:

Provided that, before taking action under this Sub-section on the ground that the return submitted by the dealer is incomplete or incorrect, the dealer shall be

given a reasonable opportunity of proving the correctness or completeness of the return submitted by him.

9. A bare reading of Section 25(1) of the Act, would show that the assessing authority is entitled to invoke Section 25(1), in cases where no return is submitted by the dealer u/s 21, within the prescribed period or if the return submitted by the dealer appears to be incomplete or incorrect. As seen from the relevant part of the impugned assessment orders extracted above, the respondent has not stated any of the contingencies which has led to the impugned orders being passed u/s 25 of the Act. In other words, the impugned orders do not show that the petitioner either failed to file: a return u/s 21 of the Act, within the prescribed period-or-filed a return with incomplete or incorrect particulars. Since the pre-requisites for invoking Section 25(1) are not indicated in the impugned orders, to have been satisfied, the respondent could not have invoked Section 25 of the Act.

10. On the contrary, the impugned orders show that the petitioner has actually reported a total and taxable turnover in the monthly returns filed in respect of both the assessment years. Therefore it cannot be presumed, in the absence of a statement contained in the impugned assessment orders that the contingency for invoking Section 25 had arisen in these cases.

11. If the petitioner had actually filed a return in accordance with Section 21, then the assessing authority is obliged u/s 22(2) to pass an order on the basis of the return. Of course, the said order does not attain finality in view of the power conferred upon the Commissioner to reopen the same at any time. Even Section 22(4) enables the assessing officer to pass a best-of-judgment assessment order, if no return was submitted by the dealer. Therefore it is clear that the occasion for the respondent to pass an order u/s 25 of the Act, is not borne out at least from the impugned orders. In such circumstances, I am of the considered view that the impugned orders are liable to be set aside and the respondent should be directed to proceed in accordance with law.

12. Accordingly, the writ petitions are allowed, the impugned assessment orders are set aside and it is left open to the respondent to proceed in accordance with law. No costs. Consequently connected miscellaneous petitions are closed.