(2012) 10 MAD CK 0178

In the Madras High Court

Case No : Writ Petition No''s. 23211 and 23212 of 2012 and M.P. No''s. 1 and 1 of 2012

L.G. Electronics India Pvt. Ltd. APPELLANT

Vs

Joint Commissioner (CT) (Appeals) FAC and Another RESPONDENT

Date of Decision : 03-10-2012

Acts Referred:
Tamil Nadu Value Added Tax Act, 2006 — Section 52

Citation : (2013) 62 VST 247

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : N. Saiprakash and N. Prasad, for the Appellant; A.R. Jayaprathap, Government Advocate (Taxes), for the Respondent

Judgement

M. Jaichandren, J.

W.P. No. 23211 of 2012.

1. Heard the learned counsel for the petitioner, as well as the learned counsel appearing on behalf of the respondents. At this stage of the hearing of the writ petition, the learned counsel appearing for the petitioner had submitted that it would suffice if the impugned order of the first respondent, dated July 31, 2012, is set aside and the matter is remitted back to the first respondent for passing a fresh order, in the appeal filed by the petitioner, in AP. C. 10/2011, on merits and in accordance with law, after giving an opportunity of hearing to the petitioner.

2. It is noted that the first respondent had passed the impugned order, dated July 31, 2012, dismissing the appeal, as not maintainable, as the petitioner had not paid the admitted amount of tax liability, along with 25 percent of the disputed amount of tax, within the period specified.

3. Paragraph 8 of the order of the first respondent, dated July 31, 2012, reads as follows:

8. As per the second proviso to section 52 of the Tamil Nadu Value Added Tax Act, 2006, the appeal papers shall be accompanied by the satisfactory proof of payment of the tax admitted by the appellants to be due or of such instalments thereof as might have become payable, as the case may be and 25 percent of the difference of tax assessed by the assessing authority and the tax admitted by the appellant. As per the second proviso to section 52 of the Tamil Nadu Value Added Tax Act, 2006, the appellants in order to file an appeal before this forum and to escape from the recovery proceedings, they had to pay Rs. 39,475 towards admitted tax (Rs. 5,26,91,258-Rs. 5,26,51,783) and Rs. 1,31,62,946 towards 25 percent of the disputed tax (25 percent of Rs. 5,26,51,783). On verification of the payment details, it was observed that the appellants had paid Rs. 1,31,62,946 towards disputed tax and Rs. 39,475 towards admitted tax vide cheque No. 054694/September 8, 2011 and Demand Draft No. 058040 dated September 23, 2011, respectively. The payment of the admitted tax and the disputed tax has been confirmed by the assessing authority vide final receipt No. 0304346 dated September 23, 2011 and 0304348 dated September 23, 2011, respectively. The dealers had been served with the assessment order on July 13, 2011 and accordingly the last date for filing the appeal is August 12, 2011 and with a further period of 30 days the last date for filing the appeal is September 11, 2011. As the day (September 11, 2011) falls on Sunday, the appellants filed appeal on September 12, 2011. Verification of the payment details revealed that the appellants have paid Rs. 39,475 towards admitted tax within the prescribed period of 30 days and further period of 30 days as per first proviso of the Tamil Nadu Value Added Tax Act, 2006, whereas, the payment of disputed tax has been made only on September 23, 2011, i.e., after a period of 11 days when calculated from the further period of 30 days. Thus it is crystal clear that the appellants have not fulfilled the conditions specified in the second proviso to section 52 of the Tamil Nadu Value Added Tax Act, 2006. Thus the eligibility of filing the appeal before this forum is not available for the appellants and hence in view of the above facts, I decline to hear this appeal on merits and dismiss this appeal petition in toto as non-maintainable.

4. From the records available before this court, it is noted that this court, by its order, dated March 1, 2012 (I.G. Electronics India Private Limited v. Government of Tamil Nadu [2013] 62 VST 244 (Mad)), made in W.P. No. 1810 of 2012, had directed the first respondent herein to hear the appeal and to pass orders thereon, on merits and in accordance with law, on the petitioner paying a sum of Rs. 50 lakhs, as part of the tax said to be payable by it, and to furnish a personal bond for the balance amount, within a period of four weeks from the date of receipt of a copy of the said order. It is also noted that the petitioner had complied with the said conditions, on March 28, 2012. As such, the first respondent ought to have heard the appeal filed by the petitioner in Appeal No. AP. C. 10/2011, and should have passed appropriate orders, on merits and in accordance with law, as directed by this court, by its order dated March 1, 2012 (L.G. Electronics India Private Limited v. Government of Tamil Nadu [2013] 62

VST 244 (Mad)), made in W.P. No. 1810 of 2012. However, the first respondent had dismissed the appeal filed by the petitioner, in Appeal No. AP. C. 10/2011, as not maintainable.

5. In such circumstances, the impugned order of the first respondent, dated July 31, 2012, is set aside. Consequently, the first respondent is directed to hear the appeal filed by the petitioner, in Appeal No. AP. C. 10/2011, relating to the Central sales tax assessment year 2008-09 and to pass appropriate orders thereon, on merits and in accordance with law, as expeditiously as possible, after giving an opportunity of hearing to the petitioner, considering the grounds raised by the petitioner in the said appeal.

6. This writ petition is ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed.

W.P. No. 23212 of 2012

In view of the order passed by this court in the writ petition, in W.P. No. 23211 of 2012, since, no further orders are necessary, this writ petition stands closed. Consequently, connected miscellaneous petition is closed.

