

(2006) 11 MAD CK 0212

In the Madras High Court

Case No : Writ Petition No. 40666 of 2006 and W.P. M.P. No. 43625 of 2006

Man Aluminium

APPELLANT

Vs

The Commercial Tax Officer (FAC)

RESPONDENT

Date of Decision : 20-11-2006

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 3(3), 3(5)

Citation : (2006) 11 MAD CK 0212

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : N. Inbarajan, for the Appellant; Haja Nazirudeen, Spl. G.P., for the Respondent

Final Decision : Dismissed

Judgement

V. Dhanapalan, J.—The issue involved in this writ petition is whether the seller who has furnished Form XVII declaration as per Section 3(3) of the Act is liable to pay the differential rate of tax or the purchaser who has purchased the goods by issue of Form XVII declaration under the Tamil Nadu General Sales Tax Act, 1959(herein after referred to as Act).

2. The petitioner firm is a registered dealer on the files of the respondent herein. They are carrying on the business of buying and selling aluminium. During the year 2003-2004, they have effected a sales of aluminium extrusion for Rs. 1,23,85,333/- at a concessional rate of 3% against form XVII declaration which has also been determined by the respondent. Thereafter, the respondent by his proceedings dated 12.4.2005, pointed out that the petitioner is not eligible to effect sales against Form XVII declaration and proposed to revise the assessment, directing the petitioner to pay the differential rate of tax. Hence, the petitioner has filed its objection dated 16.5.2005.

3. Earlier, the petitioner firm had filed W.P. No. 29622/2005 and this Court, by order dated 15.9.2005, has directed the respondent to consider the petitioner's

representation, in accordance with law and to take a decision thereon, on or before 30.11.2005. Accordingly, the petitioner has also made representation, but it is culminated in the proceedings dated 16.11.2005 in which the respondent has confirmed his proposal by holding that the petitioner is not eligible to effect sales against Form XVII declaration and thereupon, directed the petitioner to pay the differential rate of tax under the proviso to Section 3(3)(b) of the Act.

4. It is the petitioner's further contention that u/s 3(3) of the Act, which provides for a concessional rate of tax in respect of a tax payable by a dealer of the sale of any goods including consumables, packing materials and labels but excluding plant and machinery to another dealer for use in the manufacture, assembling, packing or labelling in connection with such manufacture inside the State for sale of any goods. Similarly, Section 3(5) of the Act provides for the levy of concessional rate of tax at 3% on the tax payable in respect of sale of any of the goods mentioned in the Eighth Schedule to another dealer for installation of, and use in his factory situated within the State for the manufacture of any goods. Therefore, in this situation, the order of the respondent is not in accordance with the provisions contemplated to levy and recover the differential rate of tax from the seller. In the absence of any other provision under the Act, the respondent has no jurisdiction to levy and recover the differential rate of tax from the petitioner, by the impugned proceedings, dated 16.11.2005.

5. The learned Counsel for the petitioner has strenuously contended that the petitioner is entitled to the benefit of sale of extrusion by charging the sales tax in the invoices as authorised u/s 3(3) of the Act. In this regard, he has placed reliance on the decision rendered in Sree Murugan Engineering Products Vs. The Commercial Tax Officer, , wherein it is held as follows:

15. In the instant case, the issue involved is covered by several judgments of this Court and the Supreme Court, and it has been consistently held that for the contravention of condition of form XVII, tax and penalty could be imposed only against the purchasing dealer and not against the seller, as per Section 3(3) of the Act. Therefore, the impugned order of the assessing authority is clearly without jurisdiction.

In the result, it is not possible to sustain the order passed by the learned single Judge and the same is hereby set aside. The writ petition as well as the writ appeal stands allowed with no order as to costs. Consequently, M.P. No. 1 of 2006 is closed.

6. The learned Counsel has also relied upon an unreported judgment of the first Bench of this Court made in W.A. No. 994 of 2006, dated 10.8.2006, wherein it is held as follows:

10. In the light of the clear pronouncement of this Court as well as the Supreme Court, we think that the claim made by the appellant/respondent/Deputy Commercial Tax Officer is liable to be quashed.

11. In view of the above, we allow the writ appeal and set aside the order passed by the learned single Judge in M.P. No. 2 of 2006 in W.P. No. 22311 of 2006. further, in view of the binding precedents of this Court and the Supreme Court, the writ petition stands allowed and the order of the respondent/Deputy Commercial Tax Officer dated 19.1.2006 stands quashed. The respondent is directed to consider the case of the writ petitioner/appellant in the light of this judgment and also in accordance with law. However, there will be no order as to costs.

7. In the instant case, since the issue involved is similar to the judgments cited supra, the respondent's decision holding that the petitioner is not eligible to effect the sales against Form XVII declaration and thereupon directed the petitioner to pay the differential rate of tax under the proviso to Section 3(3)(b) of the Act, is unsustainable. Therefore, in my considered opinion, in view of the facts and circumstances and the question involved and the rulings of the Supreme Court and this Court referred to supra, the impugned order of the respondent dated 16.11.2005 is not sustainable and the same is set aside. The writ petition is allowed. However, there is no order as to costs. Consequently, connected W.P.M.P. is dismissed.