(2007) 03 MAD CK 0358

In the Madras High Court

Case No : Writ Petitions No''s. 35321 and 35346 of 2005

Metso Minerals (Mumbai) Private Ltd. (formerly known as Mukund Mcnally Wellman Ltd.) — APPELLANT

Vs

Commercial Tax Officer and Another — RESPONDENT

Date of Decision : 02-03-2007

Acts Referred:
Constitution of India, 1950 — Article 226
Tamil Nadu General Sales Tax Act, 1959 — Section 31, 36, 55

Citation : (2009) 20 VST 672

Hon'ble Judges : K. Raviraja Pandian, J

Bench : Single Bench

Advocate : N. Inbarajan, for the Appellant; Haja Nazirudeen, Special Government Pleader, for the Respondent

Judgement

K. Raviraja Pandian, J.—The petitioner filed O.P. No. 841 of 2003 before the Special Tribunal praying to call for the records on the file of the first respondent in TNGST/0961395/98-99 and quash the order dated January 31, 2000 while directing the first respondent to pass a revised order by imposing 11 per cent tax under serial number 33 of Part D to the First Schedule of the Tamil Nadu General Sales Tax Act, 1959 on the cranes transferred by the petitioners to the Chennai Port Trust and grant consequential refund of tax of Rs. 1,98,53,594. O.P. No. 842 of 2003 is filed by the petitioner praying to call for the records on the file of the first respondent in L. Dis. 3040/2003 and quash the proceedings dated March 19, 2003. Those original petitions are converted to these writ petitions on being transferred to the file of this Court.

2. Heard the learned Counsel and perused the materials available on record.

3. The assessment order is under challenge in Writ Petition No. 35346 of 2005. Pursuant to the assessment order, the petitioner has made an application for rectification u/s 55 of the Tamil Nadu General Sales Tax Act. That application of the petitioner has been rejected by the order, which is put in issue in Writ

Petition No. 35321 of 2005.

4. The assessment order is an appealable order. The assessee has an equally efficacious and alternative remedy by way of appeal to the authority prescribed u/s 31 of the Tamil Nadu General Sales Tax Act, and a second appeal to the Tribunal u/s 36 of the Act.

5. The entrustment of the power to assess is not in dispute, and the authority within the limits of his power was a Tribunal of exclusive jurisdiction. The challenge was only to the regularity of the proceedings before the sales tax officer as also his authority to treat the gross turnover returned by the petitioners to be the taxable turnover. Investment of authority to tax involves authority to tax transactions which in exercise of his authority the Taxing Officer regards as taxable and not merely authority to tax only those transactions which are, on a true view of the facts and the law, taxable.

6. The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226. The Act provides for an adequate safeguard against an arbitrary or unjust assessment. The assessee had a right to prefer an appeal under the Act subject to their payment of admitted amount of tax as enjoined by the proviso to Section 31 of the Act and as regards, the disputed amount of tax, they had a remedy of applying for stay of recovery during the pendency of the appeal under the said provision [See Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others,].

7. In the light of what is stated above, this Court is of the view that the petitioner, after the rejection of the application u/s 55 of the Act, ought to have pursued his appellate remedy instead of filing the original petitions before the Tribunal, which are now numbered as these writ petitions. However, as the petitioner in this case has been bona fidely agitating the matter before the Tribunal from 2003 and on abolition of the Tribunal before this Court since 2005, this Court is of the view that in order to sub-serve the ends of justice, one more opportunity has to be given to the petitioner to pursue the appellate remedy.

8. Accordingly, the petitioner is permitted to file an appeal before the appellate authority, against the assessment order, if so advised. Two weeks'' time is granted for filing such an appeal against the order of assessment, from the date of receipt of a copy of this order. The appellate authority shall entertain the appeal, if filed within the time given by this Court in this order.

9. The writ petitions are disposed off in the above terms. No costs.