(2011) 04 MAD CK 0479

In the Madras High Court

Case No : Tax Case (Revision) No. 916 of 2006

M.K.A. Jeyassheelun APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 12((3)(b), 2(r)

Citation : (2013) 57 VST 252

Hon'ble Judges : P.P.S. Janarthanaraja, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : Chandran, for the Appellant; Haja Nazirudeen, Special Government Pleader, for the Respondent

Judgement

Chitra Venkataraman, J.—The assessee has filed this revision as against the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore dated April 4, 2001 in C. T. A. No. 184 of 2000 raising the following substantial question of law:

(1) Whether the Tribunal is right in holding that in view of omission of rule 6(d) of the Tamil Nadu General Sales Tax Rules, 1959, the petitioner is not entitled to the relief oh the ground of the sale of business as a whole, despite the fact that Explanation 3 appended to section 2(r) of the Tamil Nadu General Sales Tax Act, 1959 expressly provides for relief ?

(2) On the facts and circumstances of the case, whether the Tribunal is justified in holding-that notwithstanding the sale of three lorries resulting in winding up of its business of lorry transport division as a whole, because other divisions of businesses were carried on, relief cannot be granted to the petitioner ?

The assessee herein sold three lorries during the assessment year 1997-98 for a total sum of Rs. 5,66,331. In the absence of any evidence as to the sufferance of tax at the earlier stage, the assessing authority assessed the sale at 11 per cent. Aggrieved by the said order, the assessee filed an appeal before the Appellate

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Assistant Commissioner, who once again confirmed the order of the assessing authority on the premise that on the chassis purchased by the assessee, they have constructed the body. Since the sale of the lorry had not suffered tax earlier, the entire turnover was liable to be assessed. The assessee took a plea that the chassis had already suffered tax, they being purchased from the registered dealer. The appellate authority, however, rejected the same following the decision of the High Court reported in The South India Automotive Corporation Private Ltd. Vs. State of Tamil Nadu). The appellate authority also upheld the levy of penalty u/s 12((3)(b) of the Tamil Nadu General Sales Tax Act.

2. Aggrieved by the same, the assessee went on further appeal before the Tribunal, wherein, for the first time, the assessee took up the plea that they had sold the lorry as part of the closure of the business and hence, the benefit of Explanation 3 to section 2(r) of the Tamil Nadu General Sales Tax Act has to be extended to the assessee. Alternatively, the assessee also took up the plea that as the chassis had already suffered tax, the sale of the lorry, as such, could not be taxed. The Tribunal considered both the issues and came to the conclusion that the assessee had not sold the business as a whole or even as part of the business. Only in the course of business, the assessee had incidentally disposed of some of its assets to generate funds for its operation and the business of transport still continues. Consequently, the question of granting the benefit of section 2(r) of the Tamil Nadu General Sales Tax Act did not arise.

3. As regards the alternative plea, the Tribunal held that having regard to the fact that the assessee had constructed the body over the chassis on job-work basis and it had not suffered single point tax as lorry, the question of granting exemption did not arise. Aggrieved by the same, the assessee had filed the present revision.

4. As already pointed out, the issue, as regards the applicability of section 2(r) of the Tamil Nadu General Sales. Tax, Act, was raised for the first time as a legal principle before the Tribunal. After considering the facts and circumstances of the, case and series of decision, the Tribunal came to the conclusion that the assessee had not effected sale of part of the business to come under the protection of section 2(r) of the Tamil Nadu General Sales Tax Act. The Tribunal found, as-a matter'' of fact that the assessee was carrying on transport business even after the sale of lorries and only part of the assets of the business were disposed of and not the business as such. Consequently, the assessee did not fall under Explanation to section 2(r) of the Tamil Nadu General Sales Tax Act.

5. The learned counsel appearing for the assessee pointed out that even as per the balance sheet, the sale of the lorries had been clearly stated therein. In the circumstances, the Tribunal committed serious error in rejecting the plea for the assessee as regards the sale of the part of the business.

6. We do not agree with the submission of the learned counsel appearing for the assessee based on section 2(r) of the Tamil Nadu General Sales Tax Act and the

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same has no relevance to the facts of the case. A perusal of the balance sheet as extracted in the orders of assessment as well as in the appeal order, shows that it is not as though a part of the business was sold. There is hardly any details in the balance sheet to indicate the contention of the assessee that a part of the business had been sold. On the other hand, the details in the balance sheet showed the sales of lorries as sale of any other goods in the course of their business. Even though the assessee contended that the lorry business was a part of the business and hence the sale of lorries meant sale of business in lorry, yet there is hardly any material before this court to accept the contention on this head. Going by the findings of the Tribunal that the lorry business continued even after the sale of the lorries, we do not find any justification to accept the plea of the assessee that the claim of the assessee falls under Explanation to section 2(r) of the Tamil Nadu General Sales Tax Act. On the alternative plea taken by the assessee, going by the relevant entry in Part D, entry 36 of the Schedule during the relevant time and on the admitted fact that the assessee had built the body on the chassis purchased and that the body had not suffered tax at any time before, we do not find that the assessee can be granted second sales exemption. In the circumstances, the revision stands dismissed. No costs.

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