
(2009) 03 MAD CK 0007

In the Madras High Court

Case No : Writ Petition No. 1752 of 2009 and M.P. No. 1 of 2009

Mrs. S. Narmadha

APPELLANT

Vs

Assistant Commissioner (CT)

RESPONDENT

Date of Decision : 13-03-2009

Acts Referred:

Tamil Nadu Value Added Tax Act, 2006 — Section 26, 38(4), 39(10), 39(14), 39(3)
Tamil Nadu Value Added Tax Rules, 2007 — Rule 4(7)

Citation : (2009) 26 VST 354

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : P. Rajkumar, for the Appellant; K. Radhakrishnan, Government Advocate (Tax), for the Respondent

Final Decision : Allowed

Judgement

V. Ramasubramanian, J.—The petitioner is the wife of one B. Satish Babu, who was running a business under the name and style of Mascon

Agencies, as a proprietor. He had registration both under the Tamil Nadu General Sales Tax Act, 1959, and also under the Central Sales Tax Act,

1956. After the introduction of the Tamil Nadu Value Added Tax Act, 2006, with effect from January 1, 2007, the petitioner's husband was

assigned TIN No. 33431281710.

2. Unfortunately the petitioner's husband died in a road traffic accident on December 1, 2007 leaving behind him surviving, the petitioner, a minor

daughter and his parents. After his death, the petitioner started managing the concern and the petitioner's father-in-law filed monthly returns. In the

meantime, the petitioner applied for death certificate and legal heirship certificate. After receiving the same, the petitioner sent copies of the same

requesting the respondent to incorporate necessary changes in the certificate of registration. But there was no response and the petitioner continued to file the monthly returns.

3. In September 2008, when the petitioner sought clarifications from the respondent about the fate of her request regarding the certificate of registration, she was advised to obtain a fresh certificate. Left with no alternative, the petitioner applied for a new registration and she was granted a new registration with effect from September 23, 2008. This led to an anomalous situation wherein, there was a break in the registration.

Therefore the petitioner requested the respondent to make the registration available with effect from December 1, 2007, the date of death of the husband of the petitioner. But by the order dated December 1, 2008, the respondent rejected the said request. Therefore the petitioner has come up with the present writ petition, seeking a writ of mandamus to direct the respondent to treat the petitioner as a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006, and under the provisions of the Tamil Nadu General Sales Tax Act and the Central Sales Tax Act.

4. Heard Mr. P. Rajkumar, learned Counsel appearing for the petitioner and Mr. K. Radhakrishnan, learned Government Advocate (Tax) appearing for the respondent.

5. The fact that the petitioner's husband had registration under the Tamil Nadu General Sales Tax Act and the Central Sales Tax Act and the fact that the petitioner's husband had a registration under the Tamil Nadu Value Added Tax Act, 2006, are not in dispute. There is also no dispute about the death of the petitioner's husband on December 1, 2007. The petitioner has produced the death certificate as well as the legal heirship certificate. Section 26 of the Tamil Nadu Value Added Tax Act, 2006, makes it clear that when a dealer dies, his executor, administrator or other legal representative shall be deemed to be the dealer for the purposes of this Act. Therefore on the death of her husband, the deeming fiction u/s 26 came into force and the petitioner should have been deemed as the dealer u/s 26 for the purposes of this Act.

6. But unfortunately, the petitioner either on her own or on the advise of the respondent got misguided and obtained a fresh certificate of

registration on September 23, 2008. This is perhaps on account of the manner in which Section 38(4) is worded. Section 38(4) reads as follows:

Section 38(4) Where a registered dealer-

(a) dies, or

(b) transfers or otherwise disposes of his business, in whole or in part, or

(c) effects any change in the ownership of his business, in consequence of which he is succeeded in the business, or part thereof, by any other

person, such successor in business shall, unless he already holds a certificate of registration get himself registered under this Act.

7. Therefore in terms of Section 38(4)(c) of the Tamil Nadu Value Added Tax Act, 2006, the petitioner applied and obtained a fresh certificate of

registration. Since a certificate of registration is issued only with prospective effect, the petitioner was issued a certificate to take effect from

September 23, 2008. This actually left the petitioner in a piquant situation where there will be a break from the date of death of her husband up to

the date of issue of the fresh certificate of registration. Therefore she is before this Court.

8. But a careful reading of Sections 26 and 38(4) would show that Section 26 is the substantial provision by which a person succeeding to the

estate of a deceased person would automatically become a dealer. Section 38(4) prescribes the procedure to be followed by such person. Section

38(4) cannot be taken to be antithetic to Section 26.

9. As a matter of fact, Section 39(14) authorises the competent authority even to cancel, modify or amend any certificate of registration granted by

it. Therefore the appropriate course to be followed in cases of death of the registered dealer was to amend the certificate of registration so that the

legal representative gets his name incorporated in the certificate of registration. This procedure would ensure that there is continuity in the

registration.

10. Interestingly, Section 39(10) makes it clear that the certificate of registration issued u/s 39(3) is valid till it is cancelled by the competent

authority or on the closure of business. In the case on hand, both contingencies have not happened. The certificate was neither cancelled nor was

the business closed. Therefore the respondent cannot treat the period from the date of death of the petitioner's husband till the date of issue of a

fresh certificate, as a period in vacuum.

11. It appears that Rule 4(7) of the Tamil Nadu Value Added Tax Rules, 2007 requires the successor of a business, to whom Section 38(4) will

apply, to submit an application for fresh registration within 30 days, from the date on which he succeeds to the business. This requirement to apply

for a fresh registration, prescribed by Rule 4(7) appears to have created the confusion. The rule-making authorities appear to have omitted to take

note of the fact that there will always be a time gap between the date on which a person succeeds to the business and the date on which a fresh

certificate of registration is issued. This time gap is to be covered either by the issue of a certificate of registration with retrospective effect from the

date on which a person succeeds to the business or by issuing an amendment to the existing certificate of registration in terms of Section 39(14).

The provisions of the Act and the Rules should be construed harmoniously to arrive at the correct interpretation to be given to cases of this nature.

But unfortunately, the respondent proceeded in a hyper-technical manner and rejected the application of the petitioner, leaving a period of about

10 months from December 1, 2007 to September 23, 2008 as a period in vacuum. Therefore the action of the respondent is not in accordance

with the object of the Act, but goes against the tenor of statutory provisions.

12. In view of the above, this writ petition is allowed, directing the respondent to treat the petitioner as a deemed registered dealer in terms of

Section 26 of the Tamil Nadu Value Added Tax Act, 2006, from the date of death of her husband, viz., December 1, 2007, up to the date of

issue of a fresh certificate of registration, viz., September 23, 2008 and act accordingly while accepting and passing orders of assessment.

13. The writ petition is allowed on the above terms. No costs. Consequently connected miscellaneous petition is closed.