(2013) 04 MAD CK 0148

In the Madras High Court

Case No : Writ Petition No''s. 9302 to 9307 of 2013 and M.P. No. 1 of 2013

M/s. Sutherland Global Services P. Ltd. APPELLANT

Vs

The Assistant Commissioner (CT), Velachery Assessment Circle RESPONDENT

Date of Decision : 10-04-2013

Acts Referred:
Constitution of India, 1950 — Article 226
Tamil Nadu Value Added Tax Act, 2006 — Section 27, 27(3)

Citation : (2013) 64 VST 227

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : R.L. Ramani, for Mr. B. Raveendran, for the Appellant; Manoharan Sundaram Govt. Advocate, for the Respondent

Judgement

V. Dhanapalan, J.—Heard Mr. R.L. Ramani, learned Senior Counsel appearing for the petitioner and Mr. Manoharan Sundaram, learned

Government Advocate appearing for the respondent. The petitioner-Company calls in question the notices of revision of assessment issued to them

u/s 27 of the Tamil Nadu Value Added Tax Act (for short, ''the TNVAT Act'') for the respective assessment years, calling upon them to file their

objections within 15 days of receipt of the notices, failing which, it is observed that the proposals would be confirmed, seeking to quash the same.

2. Short facts pleaded by the petitioner are as follows:

(a) The petitioner-Company is engaged in providing Business Process Outsourcing (BPO) service to multi-national companies and IT enabled

services and has been declared as a unit in SEZ by the STPI. In order to provide services to their customers, the petitioner-Company needs to set up an office and therefore, they purchased all the infrastructures like furniture, computers, DG sets (plant and machinery), air-conditioning plants

(plant and machinery) and vehicles from various dealers within the State and from outside the State.

(b) The petitioner commenced their service operations in 2000 in the State of Tamil Nadu. Due to efflux of time, the various infrastructures

purchased by them became scrap and they sell the same to various persons. As the petitioner does not deal/trade in these assets, they cannot be

called a ""dealer"" under the provisions of the Tamil Nadu General Sales Tax Act (for short, ''the TNGST Act'') or the Tamil Nadu Value Added

Tax Act (for short, ''the TNVAT Act''). In order to meet the accounting standards and to maintain transparency in the business, the petitioner-

Company registered themselves under the TNGST Act and filed monthly Returns, reported the sale of scrap and paid the tax thereon as and when

such sale of scrap takes place.

(c) After coming into force of the TNVAT Act, the petitioner was assigned a TIN Registration Number and they continued to report the sale of

scrap (discarded furniture, computer, vehicles, etc.,) and paid tax @ 0.5% under Form K from January 2006, which all along had been accepted

by the respondent. On 21.5.2012, the respondent issued notice to the petitioner, intimating them that since they opted to file Returns in Form K,

they are not eligible to purchase goods from other States and called upon the petitioner to pay tax @ 12.5% on the inter-State purchase turnover.

The petitioner filed their objections on 22.6.2012, stating that the purchases were for the SEZ unit, and therefore, there is exemption from levy of

tax. Subsequently, nothing has been heard from the respondent.

(d) The petitioner''s place of business was inspected by the Enforcement Wing Officer on 19.7.2012, who pointed out certain defects, before

whom, the petitioner informed that they would pay the tax if they are liable, after obtaining advice from their Auditor. One of the said defects

pointed out is that the petitioner is not eligible to file Form K and they have to file Returns in Form I and pay tax at the appropriate rate and not @

0.5%. The petitioner through their Advocate, claims that since inter-State purchases are made by them, they cannot file their Returns in Form K

and they have to report the sale of scrap in Form I and pay tax @ 4% under

Entry 122 of Part B of the First Schedule to the TNVAT Act and

they undertook to pay the same. However, the respondent issued the impugned notices proposing to levy tax @ 12.5% on the instructions of the

Enforcement Wing Officer. Hence, these Writ Petitions are filed for the above relief.

3. The petitioner-Company is challenging the impugned notices on the ground that the respondent overlooked the fact that the assessment under

the TNVAT Act is on the basis of the sale value and not on the basis of the book value of the assets and hence, ""deleted value"" cannot be equated

to ""sale value"", and therefore, the impugned notices issued by the respondent are erroneous in law, as the respondent blindly adopted D-3

proposals, which is against the law laid down by the Apex Court in the decision reported in Mahadayal Premchandra Vs. Commercial Tax Officer,

Calcutta and Another, and the decision of the Division Bench of this Court reported in Madras Granites (P) Ltd. Vs. Commercial Tax Officer and

Another, .

4. On the above background of pleadings, learned Senior Counsel appearing for the petitioner submitted that the impugned notices of revision of

assessment are contrary to the established law and not sustainable, because the Enforcement Wing Officer cannot frame the assessment and the D-

3 proposals cannot be simply adopted by the respondent without application of mind. In support of his submissions, he relied on the decision of the

First Bench of this Court in W.A. Nos. 521 and 522 of 2013, dated 25.3.2013.

5. On the other hand, the learned Government Advocate appearing for the respondent submitted that the impugned revision notices are issued u/s

27 of the TNVAT Act, which also deal with the proposal for levy of penalty u/s 27(3) of the TNVAT Act. He further submitted that as per the

impugned notices, the petitioner has been given an opportunity of being heard and file objections, and without filing objections, as offered by the

respondent, the petitioner has rushed to this Court by filing these Writ Petitions, which are not maintainable.

6. It is seen that the petitioner-Company is engaged in providing Business Process Outsourcing (BPO) service to multi-national companies and IT

enabled services and has been declared as a unit in SEZ by the STPI. In order to provide services to their customers, the petitioner-Company needs to set up an office and therefore, they purchased all the infrastructures like furniture, computers, DG sets (plant and machinery), air-

conditioning plants (plant and machinery) and vehicles from various dealers within the State and from outside the State. The petitioner commenced

their service operations in 2000 in the State of Tamil Nadu. Due to efflux of time, the various infrastructures purchased by them became scrap and

they sell the same to various persons. As the petitioner does not deal/trade in these assets, they cannot be called a ""dealer"" under the provisions of

the TNGST Act or the TNVAT Act. In order to meet the accounting standards and to maintain transparency in the business, they have registered

themselves under the TNGST Act, filed monthly Returns, reported the sale of scrap and paid the tax thereon as and when such sale of scrap takes

place. After coming into force of the TNVAT Act, the petitioner was assigned a TIN Registration Number and they continued to report the sale of

scrap (discarded furniture, computer, vehicles, etc.,) and paid tax @ 0.5% under Form K from January 2006.

7. There was notice issued to the petitioner on 21.5.2012, intimating them that since they opted to file Returns in Form K, they are not eligible to

purchase goods from other States and called upon the petitioner to pay tax @ 12.5% on the inter-State purchase turnover. The petitioner filed

their objections on 22.6.2012 stating that the purchases were for the SEZ unit, and therefore, there is exemption from levy of tax.

8. The petitioner''s place of business was inspected by the Enforcement Wing Officer on 19.7.2012, who pointed out the petitioner is not eligible

to file Form K and they have to file Returns in Form I and pay tax at the appropriate rate and not @ 0.5%. It is accepted by the petitioner that

since inter-State purchases are made by them, they cannot file their Returns in Form K and they have to report the sale of scrap in Form I and pay

tax @ 4% under Entry 122 of Part B of the First Schedule to the TNVAT Act and they undertook to pay the same. However, the respondent

issued the impugned notices proposing to levy tax @ 12.5% on the instructions of the Enforcement Wing Officer, as against which, they have filed

these Writ Petitions.

9. The legality of the impugned notices, has been called in question on the ground that the Enforcement Wing Officer cannot act as an Assessing

Officer and frame the revision of assessment, and therefore, the D-3 proposals cannot be simply adopted by the respondent without application of

mind.

10. With regard to the power of this Court in interfering with the notice, the following principles have to be noted:

(a) It is settled legal principle that when a notice is issued to a person/dealer with an opportunity of being heard by calling upon them to file

objections within a time frame, it is for the person/dealer to file objections, and only thereafter, the relevant proposal stated in the said notice will be

implemented.

(b) Before taking recourse to file a Writ Petition challenging a notice, when an opportunity is given to the person/dealer to file objections to the

notice in respect of a proposal, the same has to be availed of by the person/ dealer aggrieved by the said notice.

(c) It is trite law that if the notice issued by the authority is in violation of the fundamental rights guaranteed under the Constitution of India; violation

of the principles of natural justice; ultra-vires the provisions of the relevant law; grave error in the notice and miscarriage of justice, then the

question of waiving the filing of objections will arise and this Court, under Article 226 of the Constitution of India, could invoke the Writ jurisdiction

and interfere with such notice issued by the authority.

11. In this case, no grave injustice is meted out to the petitioner and there is not even any infringement of fundamental rights. Even in respect of the

following the principles of nature justice, it is seen that the respondent rightly offered an opportunity of being heard by asking the petitioner to file

their objections to the impugned notices. Hence, it is not for the petitioner to hastily come to this Court in the stage of notice

12. In the present case, the petitioner-Company has not availed of the opportunity given to them by filing objections to the impugned notices. The

grievance of the petitioner is in respect of levying higher rate of tax at 12.5% instead of 4%, which is a matter to be adjudicated before the

authority concerned. The approach of the petitioner in rushing to this Court by filing these Writ Petitions, challenging the notices ''simpliciter'',

without even filing the objections before the respondent, cannot be sustained.

13. At this stage, the learned Senior Counsel appearing for the petitioner pointed

out the observations made by the First Bench of this Court in the

said W.A. Nos. 521 and 522 of 2013, dated 25.3.2013, which are to the effect that ""As the communication dated 5.10.2012 is an advisory

issued to the respondents, while considering the objections to be filed by the appellant, the appropriate respondent is directed to bear in mind the

provision of law and take a decision, without being influenced by the Advisory dated 5.10.2012"".

14. Therefore, the impugned proposal of the respondent for revision of assessment, is subject to the consideration of the objections to be filed by

the petitioner, and only after receipt of the objections, the respondent could form any opinion in accordance with law. The claim of the petitioner

that the Enforcement Wing Officer''s report cannot form the basis for the impugned revision of assessment and he has no role to act as Assessing

Officer and the respondent cannot simply adopt the D-3 proposal, which is a matter for concern before the respondent on filing the objections by

the petitioner. In the light of the above stated position and considering the submissions made by the learned counsel appearing for the parties, these

Writ Petitions are disposed of, with a direction to the petitioner-Company to file their objections to the impugned revision notices, before the

respondent, within a period of two weeks from the date of receipt of a copy of this order, and if such objections are filed, the respondent shall

consider the same, afford an opportunity of hearing, bear in mind the provision of law and thereafter take a decision uninfluenced by the report of

the Enforcement Wing Officer and pass appropriate orders, on merits and in accordance with law, within a period of four weeks from the date of

receipt of such objections. No costs. The Miscellaneous Petitions are closed.

