(2012) 11 MAD CK 0090

In the Madras High Court

Case No : Writ Petition No''s. 29723 to 29728 of 2012 and M.P. No. 1 of 2012

M/s. Tower Vision India Private Limited APPELLANT

Vs

The Assistant Commissioner (CT), Valluvarkottam Assessment Circle, Sire Mansion, No. 621, Anna Salai, Chennai-600 006 RESPONDENT

Date of Decision : 28-11-2012

Acts Referred:

Central Sales Tax Act, 1956 — Section 10(b), 10A, 8(2), 9
Tamil Nadu Value Added Tax Act, 2006 — Section 21, 27(2), 27(3), 39

Citation : (2012) 11 MAD CK 0090

Hon'ble Judges : R. Sudhakar, J

Bench : Single Bench

Advocate : Mohammed Shaffiq, for the Appellant; A.R. Jayaprathap, Government Advocate (Tax), for the Respondent

Judgement

Honourable Mr. Justice R. Sudhakar

1. Writ Petition No. 29723 of 2012 is filed praying to issue a Writ of Certiorari, calling for the records comprised in impugned notice in TIN

33341503162/2008-09 dated 10.09.2012 on the file of the respondent and quash the same. Writ Petition No. 29724 of 2012 is filed praying to

issue a Writ of Certiorari, calling for the records comprised in impugned notice in TIN 33341503162/2009-10 dated 10.09.2012 on the file of the

respondent and quash the same.

2. Writ Petition No. 29725 of 2012 is filed praying to issue a Writ of Certiorari, calling for the records comprised in impugned notice in TIN

33341503162/2010-11 dated 10.09.2012 on the file of the respondent and quash the same.

3. Writ Petition No. 29726 of 2012 is filed praying to issue a Writ of Certiorari,

calling for the records comprised in impugned notice in CST.

870835/2008-09 dated 10.09.2012 on the file of the respondent and quash the same.

4. Writ Petition No. 29727 of 2012 is filed praying to issue a Writ of Certiorari, calling for the records comprised in impugned notice in CST.

870835/2009-10 dated 10.09.2012 on the file of the respondent and quash the same.

5. Writ Petition No. 29728 of 2012 is filed praying to issue a Writ of Certiorari, calling for the records comprised in impugned notice in CST.

870835/2010-11 dated 10.09.2012 on the file of the respondent and quash the same.

6. Mr. A.R. Jaya Prathap, learned Government Advocate (Tax) appears for the respondent. The petitioner as well as the respondent and the relief

sought for in all the six writ petitions is one and the same. By consent all the six writ petitions are taken up together for final disposal.

7. Petitioner is a registered dealer under the provisions of the Central Sales Tax Act, 1956 as well as the Tamil Nadu Value Added Tax Act,

2006. The returns have been filed u/s 21 of the Tamil Nadu Value Added Tax Act, 2006 read with Section 9 of the Central Sales Tax Act, 1956.

The business premises of the petitioner was inspected by the Enforcement Wing Officials on 23.12.2010.

8. Thereafter, insofar as W.P. Nos. 29723 to 29725 of 2012 are concerned three revision notices all dated 10.9.2012 were issued for the

assessment years 2008-09, 2009-10 and 2010-11 respectively, together with a claim for penalty u/s 27(3) of the TNVAT Act, 2006. The

allegation raised in one of the notices is as follows:-

2) The dealers have erected towers along with equipments in 1451 places all over Tamil Nadu and have not registered the above places with the

Commercial Taxes Department as additional place of business/branches or godown by remitting the prescribed fees. As per the provisions of Rule

5(5)(a) when a registered dealer opens a new branch, he shall apply to the registering authority along with the proof of payment of fee as specified

in sub sec. (1) of Sec. 39 within 30 days from the date opening of the said Branch and get his certificate of registration amended accordingly and

as per Rule 5(5)(c) a registered dealer shall not keep his goods in any place not mentioned in the certificate of registration.

2) Thus the dealers have clearly violated the provisions of the Act and the materials kept in the undisclosed place will be treated as sale and no

Input tax credit as claimed in their annexure-II of the Form I filed will be allowed on these purchases. Value of goods kept in the undisclosed

Godown/Branch place is not registered with the Department is to be assessed to tax by adding Gross Profit. The Deemed sale value (Purchase

value + GP) and tax due at 12.5% are arrived at as given below:....

9. Insofar as Central Sales Tax is concerned, in W.P. Nos. 29726 to 29728 of 2012, consequent to the inspection by the Enforcement Wing

Officials on 23.12.2010, the concession benefits availed by the petitioner against ''C'' form declaration were denied on the ground that the

petitioner is not a telecom service provider and therefore, the concession is not applicable. Accordingly, three notices all dated 10.9.2012 have

been issued for the assessment years 2008-09, 2009-10 and 2010-11 respectively. The sum and substance of the allegation of the notice is set out

hereunder, besides the penalty u/s 10-A of the CST Act 1956 was also proposed:

Steel for fabrication, Generators, Air Conditioners, Metals and Synthetic sheet for erection of shed, Bolts and Nuts, Power Plant, ACPDB and

Battery bank:

The Towers and other Equipments are rented out to other Telecom Service Providers only such as Airtel, Aircel, Vodafone, Reliance, Tata

Docomo etc., and they themselves are not Telecom service Providers.

2) As per Sec. 8(2) of the CST Act, 1956, ''are goods of the class or classes specified in the Certificate of Registration of the registered dealer

purchasing the goods as being intended for re-sale by him or subject to any rules made by the Central Government in this behalf, for use, by the

dealer in the manufacture or processing of goods for sale or in the telecommunications network or in mining or in generation or distribution of

electrify or any other form of power'' The intention of the legislature is to give concession for ''Telecom Service Providers only'' The word in the

Act clearly emphasizes that the service providers alone shall be eligible for availing such concession (i.e.) to purchase against the C Declaration

forms. Since they are merely supplying service to other Telecom Service Providers and not a Telecom Service Provider themselves, they are not eligible for concession provided under the Act. Further, the dealers have purchased all the goods in interstate without incorporating them in their

CST Registration Certificate, which is gross violation of the provisions of Sec. 10(b) of the CST Act 1956 and warrants penalty under the Sec.

10-A of the CST Act. The dealers have purchased the following goods against C Forms during the year 2008-09.

10. The Department''s contention is the same in all the six notices issued under CST and TNVAT Act. The petitioner was called upon to submit his

objection, if any, in writing to all the six notices issued for the different assessment years, which are under challenge.

11. According to the learned counsel appearing for the petitioner, insofar as the allegation in respect of TNVAT Act, 2006 is concerned, there is

no sale of goods and consequently, the question of assessment of tax does not arise. One of the reasons given in the notice is that they have kept

the material in an undisclosed place and therefore, it is a sale. This allegation is not supported by legal provision at all. It is also the contention of the

petitioner that no input tax has been availed.

12. Insofar as the CST is concerned, the contention of the counsel for the petitioner is that that they are entitled to get the benefit of concessional

rate of tax and the ''C'' form declaration submitted is in order. The basis on which the benefit has been denied is erroneous and on a misreading of

the provision of the CST Act.

13. Thiru A.R. Jayaprathap, learned Government Advocate states that the objections of the dealer could be made to the authority concerned and

the authority will consider the same and pass reasoned order. Therefore, to challenge the revision notices at this stage is premature and may not be

justified.

14. Assuming without admitting that the contention of the counsel for the petitioner is sustainable, the fact that the authority has got the power to

issue notice u/s 27(2) of TNVAT Act read with Section 9 of the CST Act is not disputed. As to how a particular transaction will be treated for the

purpose of assessment or for extending certain benefits will be examined by the authority after considering the objections that may be placed

before him. At the stage of issuance of notice, the court will only go into the issue as to whether there is lack of jurisdiction or the notice is inherently not maintainable in law. That situation does not arise in the present cases.

15. In view of the above, it will be appropriate that the petitioner should submit a detailed objection and the legal plea now taken before this court

by way of objection. The authority shall consider the same on merits and pass appropriate orders and if the petitioner seeks personal hearing in the

reply/objection that may be filed, the authority shall grant him such opportunity. Petitioner is granted two weeks time from the date of receipt of a

copy of this order to furnish reply/objection to the notices and the authority thereafter shall decide the issue on merits and in accordance with law

expeditiously. It is open to the petitioner to pursue appropriate remedy as may be advised in the event of the decision going against the petitioner.

All the writ petitions are disposed of as above. No costs. Consequently, connected miscellaneous petitions are closed.