(2014) 02 TP CK 0043

In the Tripura High Court

Case No : Writ Petition (C) 198 of 2004

M.S. Trade and Transport VsThe State of Tripura

Date of Decision : 18-02-2014

Acts Referred:
Tripura Sales Tax Act, 1976 — Section 13(A), 21(2), 29, 32(1)(a), 32(1)(b)

Citation : (2015) 319 ELT 64 : (2014) 48 GST 526 : (2014) 71 VST 136

Hon'ble Judges : Deepak Gupta, C.J;S. Talapatra, J

Bench : Division Bench

Advocate : B.N. Majumder, for the Appellant; S. Chakraborty,A.G.A., for the Respondent

Judgement

Deepak Gupta, C.J.—This writ petition is directed against the order of the Commissioner of Taxes dated 24-03-2004, relevant portion of which reads as follows:-

It is therefore ordered, on the basis of the aforesaid findings, that the order No. F.T-04960202 dated 12.12.2000 issued by the Supdt. of Taxes, Charge-II u/s. 13(A) of the TST Act, 1976 be set aside.

The unpaid dues of Rs. 922/- be paid by the petitioner along with interest as demanded.

Supdt. of Taxes, Charge-IV is at liberty to take appropriate action against the petitioner u/s. 29. The offence may however, be compounded u/s. 32(1)(a) of the T.S.T. Act, 1976.

The Commissioner found that Section 13(A) of the Tripura Sales Tax Act (hereinafter referred to as TST Act) was not applicable in the case of the petitioner and, therefore, set aside the tax and penalty imposed on the petitioner u/s 13(A) of the TST Act. He only held the petitioner liable to pay Rs. 922/- along with interest. This portion of the order is not under challenge.

2. The grievance of the petitioner is that the Commissioner of Taxes has virtually directed the Superintendent of Taxes, Charge-IV to take action against the

petitioner u/s 29. We are not in agreement with this submission of the petitioner. There is no direction by the Commissioner of Taxes to the Superintendent of Taxes to take action u/s 29 of the TST Act. It has only given liberty to the Assessing Officer to take such action. We may make it clear that such action can be taken only if permissible under law and in accordance with the limitation prescribed under law. This is the only clarification required with regard to this order.

3. We are not in agreement with Sri B.N. Majumder, learned counsel for the petitioner, that this order is prejudicial to the dealer and is, therefore, hit by Section 21(2) of the TST Act which reads as follows:-

21.(2) In the case of any order other than an order to which such-section (1) applies, passed by any person appointed under sub-section (1) of section 4 to assist him, the Commissioner may, either of his own motion or on a petition by a dealer for revision, call for the record of any proceeding under this Act in which any such order has been passed and may make such enquiry or cause such enquiry to be made, and subject to the provisions of this Act, may pass such orders thereon not being an order prejudicial to the dealer, as he thinks fit.

Provided that no petition for revision by a dealer shall be admitted by the Commissioner unless at least fifty percent of the amount of tax assessed, or as the case may be, fifty percent of the amount of penalty levied has been paid by the dealer where order against which revision is filed relates to assessment of tax or imposition of penalty.

4. We may make it clear that the section clearly debars the revisional authority from passing an order which is prejudicial to the petitioner, but this is not an order prejudicial to the petitioner inasmuch as only liberty has been granted to the Superintendent of Taxes to take action. It is for the Superintendent of Taxes to decide whether action should be taken u/s 29 or not. It also appears to us that this order was passed because of the offer made by the petitioner himself that he is willing to compound the offence u/s 32(1)(b) of the TST Act. Compounding can only take place if an offence is made out and when the petitioner himself stated that he wanted to compound the matter, he was in a sense agreeing that action can be taken u/s 29. Therefore, this part of the order cannot be said to be prejudicial to the rights of the petitioner.

5. In this view of the matter, the writ petition is dismissed. However, while rejecting the petition, we may make it clear that it is for the Superintendent of Taxes to decide whether action has to be taken u/s 29 or not and while taking action the law of limitation has to be complied with. We find from the order that there was no order of staying the prosecution or the impugned order itself. Therefore, the limitation for the offence u/s 29 shall be calculated in accordance with law.

6. The petitioner is at liberty to approach the Commissioner of Taxes for refund of 50% of the amount already deposited by him on the ground that there is no

demand pending against him. With the aforesaid orders, the writ petition is disposed of. No order as to costs.