

(2013) 04 MAD CK 0151

In the Madras High Court

Case No : Writ Petition No. 8553 of 2013 and M.P. No. 1 of 2013

M/s. Vaas Automation Private Limited

APPELLANT

Vs

The Authority for Clarification and Advance Ruling and The
Assistant Commissioner (CT) (FAC)

RESPONDENT

Date of Decision : 02-04-2013

Acts Referred:

Central Sales Tax Act, 1956 — Section 8(1), 8(2)
Constitution of India, 1950 — Article 226

Citation : (2013) 04 MAD CK 0151

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : V. Srikanth, for the Appellant; S. Kanmani Annamalai, Government Advocate., for the Respondent

Judgement

V. Dhanapalan, J.—By consent of the learned counsel appearing for the parties, the Writ Petition itself is taken up for disposal at the stage

of admission. Heard Mr. V. Srikanth, learned counsel for the petitioner and Mr. S. Kanmani Annamalai, learned Government Advocate, who took

notice for the respondents.

2. What is challenged by the petitioner in this Writ Petition is the order of assessment passed by the second respondent in Assessment No. CST.

32201/2010-11, dated 5.3.2013, seeking to quash the same as being without jurisdiction, as the said order is contrary to Section 8(2) of the

Central Sales Tax Act (for short, "the CST Act") read with Entries 67-A and 89 of Part-B of the First Schedule and Section 48-A of the Tamil

Nadu Value Added Tax Act (for short, "the TNVAT Act") and violative of principles of natural justice and hence, invalid and illegal.

3. The facts in a nut-shell are as follows:

(a) The petitioner-Company is a registered dealer in non-ferrous metals and alloys, industrial valves, etc. Non-ferrous metals and alloys are taxable

at 4% falling under Item 89, Part-B of the First Schedule under the TNVAT Act and the Commodity Code Number is 2089. Industrial valves are

also taxable at 4% falling under Item 67-A(t), Part-B of the First Schedule under the TNVAT Act and the Commodity Code Number is 2067.

(b) The petitioner made an application to the first respondent, u/s 48-A of the TNVAT Act in respect of industrial valves manufactured and sold

by them. The first respondent issued the order, dated 23.7.2012 stating that the industrial valves are classifiable under Entry 67-A(t), Part-B of the

First Schedule under the TNVAT Act.

(c) If the goods specified in Part-B of the First Schedule, were sold inside the State of Tamil Nadu, then the local rate of tax is 4%. The rate of tax

applicable to the goods falling under Part-B of the First Schedule during the Assessment Year 2010-11, is 4%. If the goods were sold to buyers

outside the State of Tamil Nadu against "C" Form Declarations, then the rate of Central Sales Tax is 2% as per Section 8(1) of the CST Act. If

the inter-State sales are not covered by Declaration Forms, then as per Section 8(2) of the CST Act, the local rate of tax, i.e. the tax leviable

under the TNVAT Act has to be adopted. In other words, the tax payable under the TNVAT Act and the CST Act is one and the same, namely

4%, provided the inter-State sales are not covered by "C" Form Declarations, and hence, in respect of the goods of the petitioner, the Central

Sales Tax rate cannot exceed 4%.

(d) The petitioner reported a total and taxable turnover of Rs. 23,87,74,534/- and Rs. 21,58,57,011/- respectively in the Returns filed for the year

2010-11. The taxable turnover reported by the petitioner comprised of two items of turnovers, namely (i) turnover covered by "C" Forms--Rs.

20,92,09,507/- @ 2% and (ii) turnover not covered by "C" Forms--Rs. 2,44,874/- @ 12.5%. The second respondent issued a show cause

notice, dated 28.1.2013 stating that the petitioner has not filed Declaration Forms for the turnover of Rs. 21,58,57,011/- and hence, the turnover

was taxable at higher rate of tax.

(e) The matter was adjudicated and ultimately, the petitioner submitted

Declaration Forms for Rs. 17,91,96,504/- and filed documents for export

sales. Along with the reply, the petitioner also claimed exemption on the sales made to the Units located in the Special Economic Zone and

requested one month time to furnish formats of Declarations. The petitioner furnished Form-C Declarations for Rs. 31,97,693/- and Form-H

Declarations for Rs. 5,80,785/-.

(f) The second respondent passed the impugned order, dated 5.3.2013 granting concessional rate of tax on the turnover of Rs. 17,56,82,547/- as

being covered by "C" Form Declarations. For the turnover not covered by "C" Form Declarations amounting to Rs. 4,01,74,464/-, the second

respondent levied tax at 12.5% on the ground that the petitioner-Company (dealer) itself reported and paid tax at 12.5%.

(g) The said order of assessment, dated 5.3.2013 passed by the second respondent, is challenged by the petitioner on the ground that the same is

violative of the principles of natural justice and passed without jurisdiction and it is contrary to Section 8(2) of the CST Act read with Entries 67-A

and 89 of Part-B of the First Schedule under the TNVAT Act, without even issuing show cause notice and without applying the ruling of the first

respondent in the order dated 23.7.2012, and hence, the impugned order is invalid and illegal.

4. On the above background of pleadings, learned counsel for the petitioner consistently pleaded that levying higher rate of tax to the declared

turnover, is contrary to the provisions of the CST/TNVAT Acts. He further submitted that the demand made by the second respondent by levying

tax @ 12.5% instead of 4%, on the ground that the petitioner-dealer itself reported and paid tax at 12.5%, is contrary to law, and therefore, the

impugned order has to be set aside.

5. Per contra, the learned Government Advocate appearing for the respondents submitted that the grounds raised by the petitioner in this Writ

Petition, are all matters to be decided only by the appellate authority, who will look into the grievance of the petitioner. Even assuming that there is

a demand of higher rate of tax, an appeal against the impugned order, lies before the Appellate Deputy Commissioner (CT)-IV, Chennai, within 30

days from the date of receipt of the impugned order. He further contended that without exhausting the effective alternative statutory remedy of

appeal, the petitioner is before this Court, and therefore the Writ Petition is not maintainable.

6. It is not in dispute that the petitioner-Company is a registered dealer in non-ferrous metals and alloys, industrial valves, etc.; the non-ferrous

metals and alloys are taxable at 4% falling under Item No. 89, Part-B of the First Schedule under the TNVAT Act and the industrial valves are

also taxable at 4% falling under Item 67-A(t), Part-B of the First Schedule under the TNVAT Act. It is seen that for the turnover covered under

Form "C" Declarations, the tax declared by the petitioner, has been assessed and for the turnover not covered by Form "C" Declarations,

amounting to Rs. 4,01,74,464/-, the second respondent levied tax at 12.5% on the ground that the petitioner-dealer itself reported and paid tax @

12.5%. It is the grievance of the petitioner that the second respondent has not issued any show cause notice before proposing to levy tax at 12.5%

and hence, the impugned assessment order is contrary to the provisions of the CST/TNVAT Acts, namely u/s 8(2) of the CST Act read with

Entries 67-A and 89 of Part-B of the First Schedule under the TNVAT Act and also u/s 48-A of the TNVAT Act. The levy of tax @ 12.5%

instead of 4% is without jurisdiction, and therefore, the petitioner claims that the impugned assessment order has to be interfered with by this

Court, by setting aside the same.

7. Law is well settled that before filing a Writ Petition, when there is an effective alternative statutory remedy of appeal against the order passed by

the original authority and when an appellate authority is created under the statute, the same has to be availed of by any person who is aggrieved by

the order of the original authority. It is trite law that if the order passed by the original 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 order

and miscarriage of justice, then the question of waiving the appellate remedy will arise and this Court, under Article 226 of the Constitution of

India, can invoke the Writ jurisdiction and interfere with such order passed by the original authority.

8. In the present case, the petitioner has not availed of the statutory remedy of appeal against the impugned order. The grievance of the petitioner

in respect of levying higher rate of tax at 12.5% instead of 4%, is a matter which has to be adjudicated before the appellate authority. The

approach of the petitioner in rushing to this Court by filing this Writ Petition, challenging the order of the original authority, without even availing of

the statutory remedy of appeal before the appellate authority, cannot be sustained.

9. At this stage, the learned counsel for the petitioner made a plea that the petitioner may be permitted to file an appeal before the appellate

authority, as against the impugned order, within a period of two weeks from today. Accordingly, the petitioner shall file appeal within a period of

two weeks from today, before the appellate authority, as against the impugned order, dated 5.3.2013. It is open for the petitioner to agitate before

the appellate authority, in respect of all the grounds raised in this Writ Petition. If such an appeal is preferred, the appellate authority shall consider

the same in accordance with law, after affording an opportunity of hearing to them and dispose of the said appeal by passing appropriate orders,

on merits, within a period of four weeks from the date of filing of such appeal. With the above observations and directions, the Writ Petition is

disposed of. No costs. The Miscellaneous Petition is closed.