(2009) 02 MAD CK 0173

In the Madras High Court

Case No : Writ Petition No. 1729 of 2009

Nallakumar Sago Factory APPELLANT

Vs

Assistant Commissioner (CT) RESPONDENT

Date of Decision : 16-02-2009

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 24(4)

Citation : (2009) 25 VST 338

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : R. Senniappan, for the Appellant; A.C. Mani Bharathi, Government Advocate (Taxes), for the Respondent

Judgement

V. Ramasubramanian, J.—The petitioner has come up with the present writ petition challenging an order passed by the respondent, by which the respondent informed the petitioner that the issue of refund of excess tax paid by the petitioner will be considered after finalisation of the assessments.

2. Heard Mr. R. Senniappan, learned Counsel for the petitioner and Mr. A. C. Mani Bharathi, learned Government Advocate (Taxes), for the respondent.

3. By an order dated September 29, 2003, the Commercial Tax Officer, Annathanapatty Circle, Salem, finalised the assessment for the year 1996-97 and determined a sum of Rs. 64,412 as the excess tax paid by the petitioner. By the said order, the petitioner was also informed that a notice in form "C" will be issued for such refund. However, the refund did not come, forcing the petitioner to come up with a writ petition in W.P. No. 14690 of 2008 (Nallakumar Sago Factory v. Commercial Tax Officer). In the said writ petition, this Court directed the respondent to consider the representation of the petitioner and to pass orders. In response to the said order of this Court, the respondent has issued the impugned proceedings dated November 24, 2008.

4. In the impugned proceedings dated November 24, 2008, it is stated by the

respondent that the petitioner stopped business with effect from April 1, 2007, and that, at that time, assessments for the years 2002-03 and 2003-04 were pending finalisation. Therefore, the respondent has taken a stand in the impugned order that only after finalisation of the assessment for those years, the question of refund will be taken up. Aggrieved by such a stand taken by the respondent, the petitioner has come up with the present writ petition.

5. The impugned order makes it clear that the assessments for the years 2002-03 and 2003-04 were not finalised, in view of the fact that the petitioner has closed the business and the respondent himself proceeded only on the basis of electricity consumption. The law on arriving at best of judgment assessment, solely on the basis of electricity consumption, is now well-settled. Therefore, I need not go into the same.

6. The order impugned was passed in November, 2008. On that data, admittedly, no assessment had been made. A period of four months has now expired and it is not known whether any assessment order determining the liability of the petitioner has been passed during this period of four months. If no order determining any liability has been passed so far, the amount due to the petitioner cannot be withheld by the respondent. As a matter of fact, the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as, "the Act") does not provide for retention of excess tax, in anticipation of future liability. This is why Section 24(4) of the Act provides for payment of interest on belated refund of excess tax.

7. Therefore, taking into account the facts and circumstances, the writ petition is disposed of directing the respondent to refund the excess tax determined by the proceedings of the Commercial Tax Officer dated September 29, 2003, within a period of four weeks from the date of receipt of a copy of this order, if no assessment order has been passed in respect of the assessment years 2002-03 and 2003-04 imposing any liability upon the petitioner. While doing so, the respondent should take note of the provisions of Section 24(4) of the Act and award interest. No costs. Consequently, M. P. Nos. 1 and 2 of 2009 are closed.