
(2006) 11 MAD CK 0151

In the Madras High Court

Case No : Writ Petition No. 38686 of 2006 and M.P. No's. 1 and 2 of 2006

New Version

APPELLANT

Vs

Commercial Tax Officer

RESPONDENT

Date of Decision : 29-11-2006

Acts Referred:

Tamil Nadu General Sales Tax Rules, 1959 — Rule 52

Citation : (2009) 20 VST 903

Hon'ble Judges : K. Raviraja Pandian, J

Bench : Single Bench

Advocate : K.R. Krishnan, for the Appellant; A. Shanmugasundaram, Government Advocate, for the Respondent

Judgement

K. Raviraja Pandian, J.—Petitioner is a dealer in computer spares and UPS at Chennai and is an Assessee on the file of the respondent. For the assessment year 2003-04, they filed form AI returns and reported a total and taxable turnover in a sum of Rs. 1,65,61,083 and Rs. 26,04,154 respectively. The petitioner disclosed the taxable turnover in a sum of Rs. 26,04,154 under re-sale turnover at one per cent and claimed exemption on a turnover of Rs. 1,39,56,929. However, the respondent determined the taxable turnover in a sum of Rs. 1,69,15,233 as against the reported turnover in a sum of Rs. 26,04,154 by disallowing the claim of exemption relating to resale turnover in a sum of Rs. 1,39,56,929 on the ground that the details for the purchase of relevant goods and the reason for claiming exemption were not filed. The precise contention of the petitioner is that the statute requires that prior to framing the assessment, a pre-assessment notice has to be issued calling upon the petitioner to file objections, if any, to the proposal. Such procedure has not been followed in this case.

2. In paragraph 3 of the affidavit filed in support of the writ petition, the petitioner states that the respondent has not issued any pre-assessment notice, but has straightaway passed the assessment proceedings dated July 3, 2006

determining the total and taxable turnover at Rs. 1,69,15,233 and Rs. 1,69,15,233 respectively against the reported taxable turnover in a sum of Rs. 26,04,154. The mode of service as contemplated under Rule 52 of the Tamil Nadu General Sales Tax Rules, 1959 (hereinafter referred to as, "the Rules") has not been followed. Without serving any pre-assessment notice and calling for objections, framing of the assessment is highly arbitrary and illegal.

3. As the issue is pointed to the observance of Rule 52 of the Rules, i.e., whether the pre-assessment notice has been served as required under the Rules on the petitioner or not, this Court directed the learned Government Advocate to produce the assessment file so as to enable this Court to find out as to whether the pre-assessment notice has been served on the petitioner as required under Rule 52 of the Rules.

4. Prior to that, this Court is of the view that it is worthwhile to refer to Rule 52 of the Rules, which is as follows:

Service of notices.--(1) The service on a dealer of any notice, summons or order under the Act or these Rules may be effected in any of the following ways, namely,--

(a) by giving or tendering it to such dealer or his manager or agent or the legal practitioner appointed to represent him or to his authorised representative; or

Explanation : Endorsement by person who delivers the notice, etc., of having tendered or given it will be proof for the purpose of this sub-rule.

(b) If such dealer or his manager or agent or the legal practitioner appointed to represent him or his authorised representative is not found, by giving or tendering it to any adult member of his family;

(c) If the address of such dealer is known to the assessing authority, by sending it to him by registered post; or

(d) If none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence;

(2)....

5. The pre-assessment notice dated May 24, 2006 is available at page 63 of the assessment file. At page 64, there is a seal of the petitioner concern reflecting the name of the petitioner "New Version" affixed over a signature to prove the receipt of pre-assessment notice on June 3, 2006. Likewise, the assessment order dated July 3, 2006 is available at page 65 and at page 67, there is ample evidence available about the service of assessment order on the petitioner on August 19, 2006, since it has been received by affixing the signature along with the seal of the petitioner-company.

6. As per the provision above stated, the notice has to be served by giving or tendering it to the dealer or his manager or agent or legal practitioner appointed

or his authorised representative. If the person, who received it, is not the authorised representative, he would not have affixed the seal of the petitioner-company. The affixture of seal of the company makes it clear that the person, who received it, though the learned Counsel for the petitioner is not strictly stating that the signature is belonging to none of the persons attached to the petitioner concern, would be an authorised person. But for the authorisation of the petitioner, he would not have affixed the seal. I am of the view that the notice has been duly served as contemplated under the rule above stated. The one and only point that has been taken to challenge the impugned order is not available. On the other hand, it is proved that the pre-assessment notice and assessment order have been served on the petitioner and the writ petition deserves to be dismissed.

7. Accordingly, the writ petition is dismissed. No costs. Consequently, the above MPs are also dismissed.

8. After dictating the order, the learned Counsel for the petitioner submits that the affidavit has been prepared based on the instructions given by the proprietor of the petitioner-concern and requests that time may be granted to file an appeal, as the liability fastened is very huge by imposing any condition.

9. Of course, a statutory appeal remedy is available, for which, every person is entitled to recourse. Having regard to the reasons stated above, I am of the view that the petitioner can be given liberty to agitate the matter by way of filing an appeal. But, at the same time, having regard to the averments contained in the affidavit, the ground, on which, the writ petition has been filed, which is now found to be false, that indulgence could be granted only on certain terms.

Accordingly, the petitioner is directed to pay 25 per cent of the tax component within fifteen days from the date of receipt of a copy of this order for filing the appeal before the concerned appellate authority, if so advised. This payment now directed is apart from the statutory requirements for maintaining an appeal. Failing to comply with the above condition, the indulgence granted in this writ petition shall stand revoked automatically without any further reference to this Court.