(2005) 09 MAD CK 0090

In the Madras High Court

Case No : Writ Petition (MD) No. 6610 of 2005 and W.P.M.P. (MD) No. 7171 of 2005

N.V.S. Agro Derivatives APPELLANT

Vs

Commercial Tax Officer RESPONDENT

Date of Decision : 14-09-2005

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 21, 21(3)

Citation : (2006) 144 STC 106

Hon'ble Judges : K. Raviraja Pandian, J

Bench : Single Bench

Advocate : P. Radhakrishnan, for the Appellant; K.V. Vijayakumar, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—The above writ petition is filed for issuance of a writ of certiorarified mandamus to call for the records on the file of the respondent in his proceedings in O.Mu. 1977/2005 dated July 11, 2005 and quash the same as illegal and violative of the principles of natural justice and for further direction to the respondent to accept the renewal fees and renew the petitioner''s registration certificate issued under the Tamil Nadu General Sales Tax Act, 1959 and the Central Sales Tax Act, 1956.

2. The case of the petitioner is that the petitioner is a dealer in agro products and an assessee on the file of the respondent both under the Tamil Nadu General Sales Tax Act, 1959 (State Act) and the Central Sales Tax Act, 1956 (Central Act) and doing business from the year 1999 after obtaining due registration certificate, under the provisions of the Act. The certificates were duly renewed year after year by paying the, necessary fee by following the provisions for renewal. The petitioner is also very regular in filing its sales tax returns. While that being so, when the petitioner approached the respondent in the first week of July, 2005 seeking for issuance of form H declarations, they were informed that

the petitioner''s registration certificates were cancelled under both Acts from April 30, 2003 as the petitioner failed to get the certificate renewed as per the provisions of the Act and on that score refused to issue form H declaration to the petitioner. Thereafter, on July 7, 2005 the petitioner applied for renewal of the registration certificates by paying the necessary fees, but the respondent by the impugned proceedings dated July 11, 2005 returned the fees by stating that the last date for payment of fee for renewal of the registration certificates with penalty for the year 2003-04 was April 30, 2003 and since the petitioner did not pay the renewal fee and apply for renewal within the stipulated period the petitioner''s request at this point of time could not be considered. The correctness of the said order is now put in issue in this writ petition.

3. I heard the learned counsel on either side and perused the relevant statutory provisions and the materials placed on records.

4. Reliance has been made by the learned counsel for the petitioner on the judgment of this Court in Fisher Pumps (P) Ltd. v. Commercial Tax Officer, Avarampalayam Assessment Circle, Coimbatore [2005] 139 STC 152 : (2004) 10 TNCTJ 224 in order to sustain his case that the respondent has to accept the application for renewal of the registration certificate along with the fees and pass appropriate orders in accordance with law.

5. I perused the above order dated December 16, 2003 and also the judgment referred to in that order, i.e., Sun Gas Pvt. Ltd. Vs. Registrar, Tamil Nadu Taxation Special Tribunal and Another, . The judgment would be considered after considering the point whether the petitioner''s request could be granted with reference to the statutory provisions in this regard obtaining at the relevant period.

6. In this context, it is relevant to note the statutory provisions which govern the point of issuance of registration certificate and renewal thereof.

7. Section 21 of the Tamil Nadu General Sales Tax Act, 1959 requires consideration which reads as follows :

21. Procedure for registration.?(1) An application for registration shall be made to such authority, in such manner and within such period as may be prescribed and shall be accompanied by a fee of two thousand and five hundred rupees in respect of public limited companies, one thousand rupees in respect of private limited companies and five hundred rupees in respect of other dealers for the principal place of business, and in addition, a further fee of two hundred rupees in respect of public limited companies, one hundred rupees in respect of private limited companies and fifty rupees in respect of other dealers in respect of each of the places of business other than the principal place of business.

Sub-section (2) of the above provision reads as follows :

(2) If the prescribed authority is satisfied that the application is in order and the condition, if any, imposed under Sub-section (1-A) has been complied with, it

shall register the applicant and grant to him a certificate of registration in the prescribed form specifying all his places of business with copies for each of his place of business other than the principal place of business.

8. Sub-section (3) of Section 21 reads as follows :

The certificate issued under Sub-section (2) shall be valid for one year or five years, as the case may be and shall be renewed in such manner and within such period as may be prescribed on payment of the fee specified in Sub-section (1). The certificate shall be deemed to have been cancelled unless it has been renewed:

Provided that a registered dealer who fails to renew the certificate of registration within the prescribed period shall be permitted to renew the certificate before a further period, as may be prescribed, on payment of renewal fee and also a penalty equal to renewal fee.

9. The relevant rule for renewal is rule 24(9) and 24(9-A). Rule 24(9) reads as follows :

Every registered dealer shall, until his registration is cancelled, submit an application in form D and pay the fee as specified in Sub-section (1) of Section 21 of the Act for every year subsequent to that in which he applied for registration, during the month of March of the financial year for which the registration is valid and in addition a further fee as in Sub-section (1) of Section 21 in respect of each of his place of business other than the principal place of business....

10. Rule 24(9-A) reads as follows :

Notwithstanding anything contained in sub-rule (9), a registered dealer who fails to renew the certificate of registration on or before the date specified in that sub-rule shall be permitted to renew the certificate up to the 30th day of April of the year for which renewal is requested on payment of a penalty equal to the fee payable for the principal or additional place of business, as the case may be.

11. The relevant form D-l under which the certificate of registration is issued contains 7 clauses. Clause 4 is relevant as it provides for the period of validity of the certificate as one year from April 1 to March 31.

12. The relevant section and rules were amended with effect from April 1, 2002. As per the above provisions, the conditions or requirements for renewal of the registration certificate are as follows:

1. The registration certificate, is valid for one year for dealers like the petitioner and five years for companies.

2. The dealer has to submit renewal application in form "D".

3. Along with the application, proof of payment of renewal fee as specified in Section 21(1) has to be sent.

4. Application for renewal and payment of fee as aforesaid in clauses (1) and (2) has to be made every year during the month of March of the financial year for which the registration certificate is valid.

5. The dealer who fails to renew the certificate of registration on or before the month of March of the financial year for which registration certificate is valid could renew the registration certificate up to 30th April of the year for which the renewal is requested on payment of registration fee as specified in Section 21(1) with the penalty equal to the registration fees.

6. The registration certificate shall be deemed to have been cancelled unless it has been renewed.

13. So far as the facts of the present case is concerned the petitioner has got his registration certificate from June 23, 1999 to March 31, 2000. Thereafter, it was renewed up to March 31, 2003. There is no dispute about the abovesaid facts. For the assessment year 2003-04, the registration certificate has got to be renewed on or before March 2003 or at least on or before the extended period of April 30, 2003. Admittedly in this case the petitioner did not apply for renewal for the years 2003-2004 and 2004-2005 till an application was made on July 7, 2005, that is well beyond the time prescribed by the statute.

14. As per Section 21(3) the certificate issued under Sub-section (2) is valid for one year which is also re-produced under clause 4 of the form D-I certificate issued to the petitioner. The section further provides that the certificate shall be deemed to have been cancelled unless it is renewed as provided in the Act.

15. In view of the above said statutory provision and on the admitted fact, that after March 31, 2003 the registration certificate of the petitioner has not been renewed as provided in the above said statutory provisions the order impugned cannot be found fault.

16. Now let me consider the decisions relied on. First let me consider the division Bench judgment relied on by the learned Judge the Sun Gas Pvt. Ltd. Vs. Registrar, Tamil Nadu Taxation Special Tribunal and Another, . That was the case considered prior to amendment of the provisions in the year 2002. However, the observation made in that rule is very clear, which are as follows :

(1) That the view of the Tribunal that no personal hearing is required when a certificate of registration is cancelled on the ground that the renewal had not been sought is correct, (para 1 at 497)

(2) Having regard to rule 24(9) the certificate given is to be regarded as having been given for one year. That year being the financial year, its validity would be limited at the end of the financial year in which the certificate came to be issued. Renewal would then become necessary after the April 1, 1998. (para 6 at page 498)

(3) The certificate, which is required to be renewed, but has not been renewed,

is deemed by Section 21(3) of the Act to have been cancelled. A certificate which is deemed to have been cancelled does not require an order being made to that effect. The need for a hearing is only in relation to persons who apply for renewal and not to those who do not seek such renewal. There is no obligation on the authorities to provide a personal hearing to dealers who do not seek renewal of the certificates of registration in accordance with law. (para 7 at page 499)

17. The division Bench, however, granted the relief taking into consideration of the peculiar fact of that case that the certificate of registration was given to the assessee only on March 27, 1998. It did not set out the exact period for which the certificate of registration was issued. That the form in which the certificate was issued does not correspond to the prescribed form. Clause 4 of the certificate issued to the assessee in that case stated that the certificate was valid from March 2, 1998 (sic March 27, 1998) until cancelled. The certificate which was issued to the dealer and which he was required to exhibit in his place of business did not state as to when that certificate would expire. The assessee by reading the certificate, would have no clue that he was required to seek renewal within two days after receiving the certificate. The assessee in that case has commenced the business newly and the assessee was given certificate which led him to believe that it was valid until it was cancelled. The authorities themselves being responsible for having misled the assessee, they were required to give him a notice and afford him an opportunity before proceeds to cancel the certificate.

18. Those observations were made on the special facts and feature of that case with particular reference to the certificate, which has stated that the registration certificate issued on March 27, 1998 was valid until it was cancelled.

19. On that special fact of the case, the division Bench concluded that the Revenue when it commits errors of this nature which leads to the deprivation of a right in the assessee to seek renewal in time by misleading him about the need for such renewal must at the minimum put him on notice about the correct state of the law and give him an opportunity to seek renewal. The abrupt cancellation as done in that case was wholly impermissible.

20. The division Bench further gave a note of caution to make it clear that the relief granted to the assessee in that case was purely on account of the misleading form, which the Revenue chose to use to grant the certificate of registration.

21. In the case on hand no such special feature is available. The certificate issued to the petitioner, which is annexed in page 3 of the typed set of papers makes it clear that the certificate was valid from June 23, 1999 to March 31, 2000 and is renewable from year to year on payment of prescribed fee. The assessee understood the same correctly and got the renewal for the subsequent assessment year of 2000-01 and 2001-02 by complying with the statutory provisions.

22. Even the special factor as referred to above makes a ocean of difference

between the case cited and the case on hand. Hence the decision of the division Bench cannot be made applicable to the facts of the present case [vide Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, and Padmasundara Rao v. State of Tamil Nadu AIR 2002 SCW 1156.

23. The other case is rendered by a learned single Judge in Fisher Pumps (P) Ltd. v. Commercial Tax Officer, Avarampalayam Assessment Circle, Coimbatore [2005] 139 STC 152 : (2004) 10 TNCTJ 224. In that case after referring to Section 21(3) and its proviso as amended with effect from April 1, 2002 the learned Judge has come to the conclusion that it is very clear from the provision if a registered dealer fails to renew the certificate of registration, it cannot cancel the right to carry on business issued earlier. As per the proviso, the dealer must be given an opportunity to renew the certificate for further period on payment of renewal fee and penalty as provided in the proviso. The said recourse has not been followed by the respondent before cancelling the certificate.

24. It is seen from paragraph 2 of the judgment though the facts required for consideration have not been stated in detail that the Revenue by its order dated September 30, 2003 cancelled the certificate of registration granted to the petitioner with retrospective effect from April 1, 2003 on the around that the registration certificate has not been renewed within the time. It is also seen from paragraphs 4, 5 and 6 only Section 21(3) and its proviso were brought to the notice of the learned Judge and on reading of the above provision, learned single Judge has come to the conclusion that the petitioner was entitled to apply even after the period prescribed in the statutory provision and directed the respondent therein to receive the application for renewal along with fee and pass orders in accordance with law. It is evident from the last paragraph which reads that in the light of the above referred statutory provision the impugned order of the respondent was quashed.

25. Though the above said case is straight case with the point in issue in the case on hand, I am not able to follow the same as the relevant rules which prescribed the original period within which the renewal has to be obtained and the extended period within which the renewal of registration certificate can be obtained on payment of penalty has not been taken for consideration.

26. As the petitioner has very much relied on the above decisions and argued that this Court has to follow the same as ratio decidendi in the absence of any other decision taking a contrary view, this Court is constrained to give the reason for not accepting for the course argued for by the petitioner. An order rendered without reference to the statutory provision cannot be considered as a ratio decidendi binding on the court. In the latest judgment of the Supreme Court in Islamic Academy of Education and Another Vs. State of Karnataka and Others, , the larger Bench of the Supreme Court has ruled that the court cannot read some sentences from here and there to find out the intent and purport of the decision by not only considering what has been said therein but the text and context in which it was said. For the said purpose the court may also consider

the Constitutional or relevant statutory provisions visa-vis its earlier decisions on which reliance has been placed.

27. In Furest Day Lawson Ltd. v. Jindal Exports Ltd. (2001) 6 SCC 366 , while considering the plea of per incuriam raised therein the Supreme Court has referred its earlier decision in Mamleshwar Prasad and Another Vs. Kanhaiya Lal (Dead) through L. Rs., and extracted the relevant portion in paragraph 19 of the judgment which reads as follows :

7. Certainty of the law, consistency of rulings and comity of courts?all flowering from the same principle?converge to the conclusion that a decision once rendered must later bind like cases. We do not intend to detract from the rule that, in exceptional instances, where by obvious inadvertence or oversight a judgment fails to notice a pLaln statutory provision or obligatory authority running counter to the reasoning and result reached, it may not have the sway of binding precedents. It should be a glaring case, an obtrusive omission.

28. In this case also the decision was rendered without taking into consideration of the relevant provisions of the statute which were obtaining at the time of deciding the case. With great respect to the learned judge, I am not able to follow the judgment as it comes within the meaning of per incuriam. For the very same reasons, I am of the view that the matter need not be referred to a larger Bench.

29. In the result, the writ petition fails and the same is dismissed. Consequently, the connected W.P.M.P. is also dismissed. No costs.

