(2011) 11 MAD CK 0186

In the Madras High Court

Case No : Writ Petition No. 11733 of 2011 and M.P. No. 1 of 2011

Petron Engineering Construction Ltd. APPELLANT

Vs

Assistant Commissioner (CT) RESPONDENT

Date of Decision : 16-11-2011

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 16(3), 16AA, 24(3), 3B, 7C

Citation : (2013) 62 VST 330

Hon'ble Judges : Chitra Venkataraman, J

Bench : Single Bench

Advocate : P. Rajkumar, for the Appellant; R. Sivaraman, Special Government Pleader (Taxes), for the Respondent

Final Decision : Allowed

Judgement

Chitra Venkataraman, J.—The petitioner has sought for writ of certiorari to quash the proceedings relating to the assessment year 2003-04 dated March 21, 2011 on the ground of limitation and without jurisdiction. The petitioner herein was originally assessed on the files of the respondent under assessment order dated July 12, 2005. In respect of the execution of certain works contract, the petitioner exercised the option u/s 7C of the Tamil Nadu General Sales Tax Act, 1959 to have the turnover assessed on a compounded tax rate of 10 per cent. Apart from that, there were other turnovers, which were taken for assessment under the regular chargeable provisions, namely, section 3B of the Tamil Nadu General Sales Tax Act. In respect of the turnover assessed u/s 3B, originally a notice of reassessment was issued on March 31, 2006. A perusal of the notice shows that it was confined to the turnover falling for consideration u/s 3B alone, which means, the assessment was subjected to part revision alone. The petitioner filed its reply thereon and ultimately on June 20, 2006, an order of reassessment was made on the petitioner. Long thereafter, on March 21, 2011, the petitioner was visited with yet another notice on reopening of the assessment, the relevant portion of which reads as follows:

The dealers have done works contract u/s 3B and u/s 7C. It is proposed to revise the assessment uniformly u/s 3B of the Act after recheck of accounts.

Notice was also issued proposing to levy interest, with which we are not concerned herein.

2. in respect of the assessment made u/s 7C, reopening of the said turnover for the purposes of reassessment is provided for u/s 16AA of the Tamil Nadu General Sales Tax Act. As per the said provisions, where any part of the turnover assessed u/s 7C has escaped assessment from tax, the assessing officer could reopen the assessment at any time within the period of five years from the date of order of the final assessment made by the assessing authority. Given the fact that the original assessment in respect of the above turnover u/s 7C was made as early as July 12, 2005, going by the time-limit for reopening the said turnover, the same should have been done on or before July 11, 2010. On the abovesaid legal provision, the petitioner contends before this court that the proceedings taken on November 19, 2010 to reopen the said assessment relating to section 7C turnover is patently without jurisdiction.

3. On notice, the respondent has filed counter-affidavit stating that the writ petition is not maintainable in law, since the same is as against the notice inviting objection. Referring to the decision of this court in Writ Appeal No. 1025 of 2006 that the jurisdictional issue could very well be urged before the authority concerned and hence, the writ petition is not maintainable, the counter states that the question of granting any relief does not arise. Barring this submission, there is no effective counter to the writ petition. In paragraph 5 of the counter-affidavit, it is stated that the period of assessment lapses on June 19, 2011 and the revised notice was issued on March 21, 2011.

4. Going by the dates on which the assessment was made on July 12, 2005 and the provision on section 16AA of the Tamil Nadu General Sales Tax Act prescribing five year time-limit, I do not understand how the limitation had been taken in by the officer as falling on June 19, 2011. In fact, learned Special Government Pleader is not in a position to explain and substantiate as to how the notice could be sustained in the face of the five year time-limit u/s 16AA of the Act, particularly in respect of the turnover covered u/s 7C of the Act. Given the fact that the order of assessment was made on July 12, 2005 and that there is no provision even u/s 16(3), (4), (5) and (6) of the Act to save the limitation, by reason of the first reassessment order made within the time so as to infuse any life to the second notice, I have no hesitation in rejecting the plea of the respondent that the availability of an alternative remedy herein should stand in the way of this court passing an order in favour of the petitioner.

5. Satisfied of the stand of the petitioner herein that the notice issued is totally hit by limitation as provided u/s 16AA of the Tamil Nadu General Sales Tax Act, no useful purpose would be served by directing the petitioner to once again go before the officer concerned to state the very same plea. In the light of the

above, the proposed notice to revise the assessment in respect of section 7C turnover stands quashed. As far as the proposal to reassess the turnover relating to sale of paints, electrical goods at higher rate is concerned, the said turnover was also not a subject-matter of revision in the notice issued March 31, 2006. Hence, what applies to section 7C turnover, would hence have equal relevance to the turnover on sale of paints and electrical goods. It may be of relevance herein to point out that the notice issued originally to reopen the assessment on March 31, 2006 was confined to the turnover on works contract alone. There is no reference at all as regards this turnover being a subject-matter of consideration in the first notice of revision. In the light of the facts available, which are very patent, the writ petition merits to be allowed in so far as these two turnovers are concerned. As regards the levy of interest u/s 24(3) of the Act, it is open to the petitioner to file objection within a period of two weeks from the date of receipt of a copy of the order. The writ petition is allowed. No costs. Consequently, M.P. No. 1 of 2011 is closed.