(2012) 04 MAD CK 0135

In the Madras High Court

Case No : Writ Appeal (MD) No''s. 231 to 233 of 2012 and M. P. (MD) No''s. 1, 1 and 1 of 2012

Promech Industries APPELLANT

Vs

Assistant Commissioner (CT) (Fact) RESPONDENT

Date of Decision : 25-04-2012

Acts Referred:
Tamil Nadu Value Added Tax Act, 2006 — Section 2(11), 3(2), 42(3), 52

Citation : (2013) 57 VST 238

Hon'ble Judges : R. Banumathi, J;B. Rajendran, J

Bench : Division Bench

Advocate : P. Radhakrishnan, for the Appellant; M. Govindan, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—These writ appeals are preferred against the order granting conditional stay of recovery that appellant to deposit 25 per cent of the demand on or before March 30, 2012. The appellant has purchased electric and electronic goods from other States and also from registered dealers within the State and purchased camera, sensors, lens and IC, etc., from other countries and claimed input-tax, credit on the purchases, effected from registered dealers within the State. The appellant assembled the above goods and manufactured "grain color sorter machine" and "paddy moisture machine" according to the requirements of the customers. Earlier on February 3, 2010, pre-revision notice was issued proposing to collect VAT at 12.5 per cent on the total turnover. Challenging the pre-revision notice, the appellant filed W. P. (MD) Nos. 4675 to 4677 of 2010 on the ground that the appellant''s machineries are "capital goods" as denned u/s 2(11) of the Tamil Nadu Value Added Tax Act, 2006 and that only four per cent is leviable and not 12.5 per cent. Pointing that writ petitions have been filed challenging the pre-revision notice, by the order dated April 8, 2010, writ petitions were disposed of with a direction to the appellant to offer their explanations on the pre-revision notice issued to them.

2. Subsequently, the Assistant Commissioner (CT) (FAC), Madurai Rural (South), Madurai has passed the order dated November 22, 2010, holding that the sales effected by the assessee (appellant) are only "machineries" and "not capital goods" which are liable to be assessed at 12.5 per cent as per item No. 69 of Part C of the First Schedule u/s 3(2) of the Tamil Nadu Value Added Tax. Act, 2006 and called upon the appellant to pay balance tax due. Challenging the assessment order for the years 2006-07, 2007-08 and 2008-09, the appellant filed W. P. (MD) No. 14628 to 14630 of 2010. By the order dated December 16, 2010, the said writ petition was disposed of with a direction to the respondents to consider the objections filed by the appellant and also to afford personal hearing before passing final order.

3. Thereafter, personal hearing was afforded to the appellant by the respondents. Upon consideration of the facts put forth by the appellant, the Assistant Commissioner (CT)(FAC), Madurai Rural (South) Circle, Madurai, has passed the order on January 25, 2012 holding that the dealers have manufactured only "machines" and "not capital goods" and hence, the machines are liable to be assessed as per item No. 69 under Part C of the First Schedule to the Act and under three different orders called upon the appellant to pay total balance tax due at Rs. 1,04,18,510 for the above-said three assessment years. The details of assessment year; total tax due and tax paid and balance due are as under:

4. In the said orders, the Assistant Commissioner (CT) had also levied penal interest at the rate of 1.25 per cent per month to be paid by the dealers u/s 42(3) of the Tamil Nadu Value Added Tax Act, 2006. Challenging the same, the appellant filed W. P. (MD) Nos. 2265 to 2267 of 2012.

5. At the time when the writ petitions came up for admission, the learned single judge granted stay on condition that the appellant should pay 25 per cent of the demand on or before March 30, 2012. Challenging the said conditional order, the appellant preferred these appeals.

6. The learned counsel for the appellant contended that what is manufactured by the appellant can be classified as "capital goods" and while so, the authority erred in saying that the goods of the appellant are only "machines". It was further submitted that the grain color sorter machines sold by the appellant are "capital goods" and the same are liable to be taxed at the rate of four per cent only and the impugned order passed with predetermination has no legs to stand and therefore, as against imposing condition to deposit 25 per cent of the demand, the appellant can very well maintain the writ appeals.

7. In support of his contention, the learned counsel placed reliance upon the judgment of the Supreme Court in Appeal (Civil) No. 5795 of 2007 judgment dated December 11, 2007 in Indu Nissan Oxo Chemicals Ind. Ltd. v. Union of India.

8. We have carefully perused the typed set of papers and considered the contention of the appellant.

9. The Assistant Commissioner has passed a speaking order holding that the grain colour sorter machines sold by the appellant are only machines and not "capital goods", which are liable to be assessed at the rate of 12.5 per cent p.a. as per item No. 69 of Part C of the First Schedule u/s 3(2) of the Tamil Nadu Value Added Tax Act, 2006. Whether the levy is correct or not is to be decided only by the authority. As per section 52 of the Tamil Nadu Value Added Tax Act, as against the order passed by the Assistant Commissioner (CT), an appeal lies before the Deputy Commissioner. When the Act provides for statutory appeal, whether the writ petition filed by the appellant is maintainable or not is the point to be determined in the writ petition.

10. In these writ appeals, the short point falling for consideration is whether the grant of stay on condition directing the appellant to deposit 25 per cent of the demand is justified ?

11. The condition imposed directing the appellant to pay 25 per cent of the demand cannot be said to be unreasonable. Even as per the second proviso to section 52 of the Act, for preferring appeal, 25 per cent of the dues between the amount of tax assessed and the tax admitted by the dealer to be due is required to be paid and the proof thereafter to be furnished before the appeal was entertained.

12. Going by the statutory provisions, the order of the learned single judge imposing condition of depositing. 25 per cent of the demand cannot be said to be unreasonable or arbitrary warranting interference in these intra-court appeals. The writ appeals are bereft of merits and the same are dismissed. No costs. Connected miscellaneous petitions are closed. The learned single judge directed the appellant to deposit 25 per cent of the demand on or before March 30, 2012. Consequently, the appellant shall deposit 121/2 per cent of the demand on or before May 3, 2012 and the balance 121/2 per cent of the demand on or before June 3, 2012.

