(2015) 03 MAD CK 0561

In the Madras High Court

Case No : Writ Petition Nos. 9154 and 9155 of 2015

Rishikesh Electricals APPELLANT

Vs

Assistant Commissioner (CT) RESPONDENT

Date of Decision : 30-03-2015

Acts Referred:
Tamil Nadu Value Added Tax Act, 2006 — Section 27, 3

Citation : (2015) 83 VST 229

Hon'ble Judges : S. Vaidyanathan, J

Bench : Single Bench

Advocate : C. Baktha Siromoni, for the Appellant; A.N.R. Jayapratap, Additional Government Pleader, Advocates for the Respondent

Judgement

S. Vaidyanathan, J—Heard Mr. C. Baktha Siromoni, learned counsel for the petitioner and Mr. A. N.R. Jayapratap, learned Additional Government Pleader (Taxes). With the consent of both the parties, these writ petitions are taken up for final disposal at the admission stage itself. The petitioner has filed these writ petitions seeking to quash the proceedings of the respondent dated February 20, 2015.

2. Section 3 of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "the Act 2006") is extracted hereunder:

"3. Levy of taxes on sales of goods.--(1)(a) Every dealer, other than a casual trader or agent of a non-resident dealer, whose total turnover for a year is not less than rupees five lakhs and every casual trader or agent of a non-resident dealer, whatever be his total turnover, for a year, shall pay tax under this Act.

(b) Notwithstanding anything contained in clause (a), every dealer, other than a casual trader or agent of a non-resident dealer, whose total turnover in respect of purchase and sale within the State, for a year, is not less than rupees ten lakhs, shall pay tax under this Act.

(1A) Notwithstanding anything contained in this Act, for the purpose of assessment of tax under this Act, for the period from the 1st day of January 2007 to the 31st day of March 2007 in respect of dealers referred to in clause (a) or (b) of sub-section (1), the total turnover for the period from the 1st day of April 2006 to the 31st day of December 2006 under the repealed Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of 1959) and the total turnover for the period from the 1st day of January 2007 to the 31st day of March 2007 under this Act, shall be the total turnover for the year 2006-07 in respect of such dealer whose total turnover for that year exceeds the total turnover referred to in the said clause (a) or (b) of sub-section (1) and if,--

(a) such dealer has not collected the tax under this Act, he is liable to pay tax under this Act,

(b) such dealer has collected the tax under this Act, he is liable to pay tax under this Act, and other provisions of this Act, shall apply to such dealer.

(2) Subject to the provisions of sub-section (1), in the case of goods specified in Part B or Part C of the First Schedule, the tax under this Act shall be payable by a dealer on every sale made by him within the State at the rate specified therein:

Provided that all spare parts, components and accessories of such goods shall also be taxed at the same rate as that of the goods if such spare parts, components and accessories are not specifically enumerated in the First Schedule and made liable to tax under that Schedule.

(3) The tax payable under sub-section (2) by a registered dealer shall be reduced, in the manner prescribed, to the extent of tax paid on his purchase of goods specified in Part B or Part C of the First Schedule, inside the State, to the registered dealer, who sold the goods to him.

(4)(a) Notwithstanding anything contained in sub-section (2), but subject to the provisions of sub-section (1), every dealer, who effects second and subsequent sales of goods purchased within the State, whose total turnover relating to taxable goods, for a year, is less than rupees fifty lakhs, may, at his option, instead of paying tax under Sub-section (2), pay a tax, for each year, on his (turnover relating to taxable goods) at such rate not exceeding one per cent, as may be notified by the Government. Such option shall be exercised by the dealer,--

(i) Who commences business, within thirty days from the date of commencement of the business;

(ii) Whose turnover is below rupees fifty lakhs during the previous year, on or before 30th day of April of the year for which he exercises such options;

(iii) For the year 2008-09, within thirty days from the date of commencement of the Tamil Nadu Value Added Tax (Second Amendment) Ordinance, 2008:

Provided that such dealer shall not collect any amount by way of tax or purporting to be by way of tax:

Provided further that such dealer shall not be entitled to input-tax credit on the goods purchased by him:

Provided also that the dealer who purchased goods from such dealer shall not be entitled to input tax credit on the goods purchased by him.

(4)(b) If the turnover relating to taxable goods, of a dealer paying tax under clause (a) in a year, reaches rupees fifty lakhs at any time during that year, he shall inform the assessing authority in writing within seven days from the date on which such turnover has so reached. Such dealer is liable to pay tax under sub-section (2) on all his sales of rupees fifty lakhs and above and he is entitled to the input-tax credit on the purchases made from the date, and on the stock available with him, the purchases of which has been made within ninety days before the date, on which such turnover has reached rupees fifty lakhs:

Provided that such dealer whose turnover has reached rupees fifty lakhs during the previous year shall not be entitled to exercise such option for subsequent years.

(5) Subject to the provisions of sub-section (1), every dealer, who deals in the goods specified in the Second Schedule, shall pay a tax, for each year, on the sale or purchase of such goods, at the point and at the rate specified therein:

Provided that the dealer, who pays tax under this sub-section, shall not be entitled to input tax credit on goods purchased by him.

(6) When goods are sold together with containers or packing materials, the rate of tax applicable to such containers or packing materials, as the case may be, shall, whether the price of the containers or packing materials is charged separately or not, be the same as those applicable to the goods contained or packed and the turnover in respect of containers and packing materials shall be included in the turnover of such goods.

(7) Where the sale of goods, packed in any container or packed in any packing material, in which such goods are packed, is exempt from tax, then the sale of such containers or packing materials shall also be exempt from tax.

Explanation.--For the purposes of sub-sections (6) and (7), containers include gunny bags, tins, bottles and any other containers."

3. Admittedly, in this case, the turnover is less than Rs. 10 lakhs and the proposal and determination of tax at 14.5 per cent and levy of penalty in terms of section 27 of the Act 2006 on the total turnover which is less than Rs. 8 lakhs is contrary to the provisions of section 3 of the Act 2006, which is extracted supra.

4. The learned Additional Government Pleader (Taxes) contended that the petitioner would have collected the tax amount and would not have paid the amount and that is the reason why the tax at the rate of 14.5 per cent and the penalty was arrived at.

5. Even assuming that the case of the respondent has got to be accepted, there is no mentioning about the non-payment of tax amount collected by the petitioner in the impugned orders. Hence, the said contention cannot be accepted. The impugned orders dated February 20, 2015 are very clear that the turnover is less than Rs. 10 lakhs. That apart, the petitioner has the benefit of section 3 of the Act 2006. For the aforesaid reasons, these writ petitions are allowed and the proceedings of the respondent dated February 20, 2015, are quashed. However, this court makes it clear that if any tax amount collected by the petitioner has not been remitted to the Department as contended by the respondent, it is open to the Department to initiate appropriate action in accordance with law. No costs.