(2005) 07 MAD CK 0065

In the Madras High Court

Case No : W.A. No. 1383 of 2005 and Writ Appeal No. 1384 of 2005

Royal Insulation (P) Ltd. APPELLANT

Vs

The Commercial Tax Officer RESPONDENT

Date of Decision : 21-07-2005

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 10(3), 12, 12A, 14, 15

Citation : (2005) 3 LW 582 : (2006) 147 STC 246

Hon'ble Judges : Markandey Katju, C.J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : Hema, for K.J. Chandran, for the Appellant; T. Ayyasamy Special Govt. Pleader, for the Respondent

Judgement

F.M. Ibrahim Kalifulla, J.—The above writ appeals have been filed against the order of the learned single Judge dated 16.6.2005 passed in

Writ Petition Nos. 19370 and 19371 of 2005.

2. Heard Ms. Hema, learned counsel for the appellant and Mr. T. Ayyasamy, learned Special Government Pleader for the respondent.

3. The grievance of the appellant is that since the factory was on strike they could not furnish the declaration forms which ultimately resulted in the

assessing authority passing the impugned order of assessment by imposing tax liability to the tune of Rs. 7,88,440/-. Since the grievance of the

appellant appears to be genuine the learned Judge has also set aside the order of assessment, but however, imposed a condition that the appellant

should deposit a sum of Rs. 3,00,000/- (Rupees three lakhs only) towards the TNGST assessment apart from paying the entire tax component in

respect of the CST assessment. In such circumstances, we only modify that part of the order of the learned Judge directing the appellant to pay the abovesaid sum. Instead, we direct the appellant to furnish personal bond for the entire tax liability imposed by the assessing authority both TNGST

as well as CST. We confirm the other part of the order of the learned Judge setting aside the order of the assessing authority and also permitting

the appellant to produce the required documents. The assessing authority shall thereafter pass fresh order of assessment preferably within a month

from the date of receipt of a copy of this order. The appellant should furnish the necessary personal bond as directed above within two weeks

from the date of receipt of copy of this order.

4. Before parting with the case, we would also like to say that in Section 31 of the Tamil Nadu General Sales Tax Act (hereinafter referred to as

the ''Act'') there is a provision for appeal to the Appellate Assistant Commissioner. However, the second proviso thereof states:

Provided further that in the case of an order under Sub-section (3) of Section 10, Section 12, Section 12-A, Section 14, Section 15 or Sub-

sections (1) and (2) of Section 16, no appeal shall be entertained under this Sub-section unless it is accompanied by satisfactory proof of the

payment of the tax admitted by the appellant to be due or of such instalments thereof as might have become payable, as the case may be and

twenty five per cent of the difference of the tax assessed by the assessing authority and the tax admitted by the appellant.

5. Thus, 25% of the disputed amount has to be deposited by the assessee as a pre-condition of the entertainment of his appeal. There is no

provision for waiver or stay by the appellate authority of the pre-deposit of this 25% of the difference of the tax assessed by the assessing authority

and the tax admitted even in genuine and appropriate cases. In our opinion absence of such provision permitting waiver or stay of the pre-deposit

by the appellate authority in genuine and appropriate cases is often causing great hardship to the dealers.

6. In almost all the Tax Statutes wherever there is a provision of pre-deposit of some amount subject to which alone the appeal can be entertained

there is almost invariably a provision permitting waiver or stay by the appellate authority of the pre-deposit amount in genuine and appropriate

cases where the assessee can satisfy the appellate authority that he has genuine difficulty in depositing the predeposit amount either in whole or any part thereof or there is some other good reason for grant of stay/waiver. However, in the Tamil Nadu General Sales Tax Act there is no such

provision for waiver or stay even in appropriate and genuine cases. In our opinion this is not fair to the dealers.

7. In our opinion, there should be such a provision permitting waiver or stay of the pre-deposit amount by the appellate authority in appropriate

and genuine cases because there may be cases where the assessee may not be able to deposit the pre-deposit amount for genuine reasons, or

there may be a very glaring mistake in the order, or where waiver or stay should be done for some other good and appropriate reason. There may

be cases where a huge demand is arbitrarily made by an assessment order although the assessee can clearly satisfy the appellate authority that he is

not liable to pay tax at all, or at a far lower amount. Because of the absence of provision for waiver or stay in Section 31 of the Act many cases

are coming up directly by way of writ petition in this Court challenging the assessment order. We are not inclined to entertain such writ petitions

because there is alternative remedy by way of appeal. However, the appeal may be rendered illusory in many cases because there is no provision

for waiver or stay of the pre-deposit amount even in genuine and appropriate cases.

8. Hence we recommend to the State Government to issue an ordinance forthwith amending Section 31 of the Tamil Nadu General Sales Tax Act

and making a provision permitting waiver or stay by the appellate authority (in its discretion) of the pre-deposit amount in appropriate and genuine

cases so that the assessees may not face hardship, and the alternative remedy of appeal may not become illusory.

9. It may also be pointed out that the second appellate remedy u/s 36 of the Act can only be availed of if the entire tax amount is prepaid vide

second proviso (a) to Section 36 of the Act. Hence we recommend that there should be a similar amendment in Section 36 of the Act also. The

writ appeals are disposed off. No costs. W.A.M. P.Nos. 2579 and 2580 of 2005 are closed.