(2008) 02 MAD CK 0135

In the Madras High Court

Case No : Writ Petition No. 26831 of 2007 and M.P. No. 1 of 2007

Sinetech APPELLANT

Vs

The Commercial Tax Officer RESPONDENT

Date of Decision : 06-02-2008

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 16, 16(1), 7C, 7C(4)

Citation : (2008) 15 VST 398

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : A.R. Jayashankar, for the Appellant; T. Ganesan, GA for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—Heard the arguments of Mr. A.R. Jayashankar, learned Counsel appearing for the petitioner and Mr. T. Ganesan, learned Government Advocate representing the respondent and perused the records.

2. In this petition, the petitioner challenges the notice dated 13.7.2007 for the revised assessment issued u/s 16 of the Tamil Nadu General Sales Tax Act, 1959 [for short, ''TNGST Act''] .

3. It was contended by Mr. A.R. Jayashankar, learned Counsel appearing for the petitioner, that for the assessment year 2004-2005, the petitioner had exercised the option of paying the tax at compounding rate as required u/s 7C of the TNGST Act by filing the return in Form A-1 and once compounding option was accepted by the Department, a compounding order was also passed to that effect. Therefore, the transactions of the petitioner will not come under the category of "works contract" thereby the respondent to assume jurisdiction to revise the assessment and levy tax on the transaction as ordinary sale by invoking the provisions of Section 16 of the TNGST Act does not arise. The reliance placed by the respondent on the judgment of the Supreme Court

reported in (2005) 140 STC 22 [State of A.P. v. Kone Elevators (India) Ltd.] is not attracted. On the contrary, the judgment of the Supreme Court reported in 103 STC 95 [State of Tamil Nadu v. Devendran & Co.] confirming the judgment of the Division Bench of this Court in Deputy Commissioner of Commercial Taxes, Vellore Vs. Devandran and Co., will squarely apply.

4. A counter affidavit dated Nil has been filed by the respondent. The contentions taken in the counter affidavit was that re-assessment was proposed to be done not under a different head but it was assessed at a rate lower than at which it is assessable. It is also submitted that the present notice is a show cause notice and the petitioner should give his reply and if any adverse order is passed, proper forum can be approached.

5. Learned Counsel appearing for the petitioner stated that pursuant to the notice, the petitioners have produced the order of work contract and also submitted the necessary Form A and he also drew the attention of this Court to the provisions contained u/s 7-C(4) of the TNGST Act, which reads as follows:

Section 7-C(4) A dealer, exercising option under Sub-section (1) shall, so long as the option remains in force, not be required to maintain accounts of his business under this Act or the rules made thereunder except the records in originals of the [works contract], extent of their execution and payments received or receivable in relation to such [works contract], executed or under execution.

6. The learned Counsel also relied upon the provisions contained before the amendment in Section 7-C(4) of the TNGST Act, which reads as follows:

(4) A dealer, exercising option under Sub-section (1) shall, so long as the option remains in force, not be required to maintain accounts of his business under this Act or the rules made thereunder except the records in originals of the civil works contract, extent of their execution and payments received or receivable in relation to such civil works contract, executed or under execution.

7. A Division Bench of this Court in 47 STC 264 [Deputy Commissioner of Commercial Taxes, Vellore v. Devendran & Co.] dealt with the application of Section 16 of the TNGST Act wherein it was held that if earlier assessment is made on a particular percentage and subsequently, if the assessing authority wanted to reopen the assessment by taking away part of the sales turn over from the turn over already assessed for finding out the corresponding purchase turn over of raw hides and skin and subject it to a tax at 13% by invoking Section 16 of the TNGST Act, the same power is not available to the authorities. The funding of the Tribunal was affirmed by the Division Bench in the following lines:

In this case, as we pointed out already and as admitted, the entire sales turnover relating to the tanned hides and skins had been assessed at 1-1/2 per cent under item 7(b) and the sales turnover was assessable only under that item. Only if the whole or any part of this turnover had escaped such assessment, the whole or any part of the turnover can be said to have been assessed at a lower than the rate at which the same was assessable so as to attract the provisions of Section 16(1)(b). That not being the case, the order of the Tribunal cannot be said to be erroneous in law and consequently the tax revision case is dismissed.

The said judgment was affirmed by the Supreme Court in 103 STC 95 (cited supra).

8. The learned Counsel also produced the work order issued by Indian Oil Corporation in favour of the petitioner, which was also submitted to the respondent. Therefore, the only question that remains for consideration is whether the respondent had power u/s 16 of the TNGST Act to reopen the assessment on the basis of the judgment of the Supreme Court in (2005) 140 STC 22 [cited supra]. The reliance placed upon the said judgment of the Supreme Court in Kone Elevators case is totally misconceived as in the present context, the petitioners have agreed to compound rate by paying the tax in terms of Section 7C of the TNGST Act and also filed the returns in Form A-1. In such a case, the question of revising the compounding order does not arise especially when a dealer is exercising option in payment of rates in compound rate and the petitioner was also made to pay tax at 4% on the entire contract value. Section 16 of the TNGST Act is not intended to withdraw the said option exercised by the petitioner dealer.

9. In the light of the above and in view of the judgment of the Supreme Court in Devendran and Company case (cited supra), the writ petition will stand allowed. The impugned order dated 13.7.2007 will stand set aside. No costs. Connected Miscellaneous Petition is closed.