(1988) 04 MAD CK 0022

In the Madras High Court

Case No : Writ Petition No. 776 of 1982

Sneva Diamond Tools (P.) Ltd. APPELLANT

Vs

Appellate Assistant Commissioner (Commercial Taxes) IV, Madras City and Others RESPONDENT

Date of Decision : 11-04-1988

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 12(3), 24(3), 26, 55

Citation : (1989) 72 STC 329

Hon'ble Judges : Swamikkannu, J

Bench : Single Bench

Advocate : C. Natarajan, for the Appellant; R. Lokapriya, Government Advocate (Taxes), for the Respondent

Judgement

Swamikkannu, J.—This is a petition for directing the first respondent to dispose of the petition dated 27th April, 1981 of the petitioners in

accordance with law.

2. Mr. C. Natarajan, learned counsel for the petitioners, in his interesting and erudIting argument submits that the provision of section 55 of the

Tamil Nadu General Sales Tax Act, 1959 is wider in scope than the appellate provision available in the enactment. He submits that the ratio

decidendi in The State of Madras Vs. S.G. Jayaraj Nadar and Sons, is a declared law. As per the provisions of article 141 of the Constitution, a

declared law should be followed by all the Courts in our mother-land, including the Tribunals, quasi-judicial organisations and Governments.

3. In the instant case before us what is sought for the petitioners is to quash the order of the first respondent dated 3rd August, 1981 in L. Dis.

1462/81 and also to direct the first respondent to dispose of the petition dated

27th April, 1981 of the petitioner in accordance with law.

4. The accompanying affidavit, sworn to the Managing Director of the petitioner-company runs thus : The petitioners are assessees on the files of

the Deputy Commercial Tax Officer, Esplanade I Assessment Circle. During the periods 1972-73 and 1973-74 they were assessees on the file of

the Additional Circle, 17, L.G.N. Road, Madras-2. The assessments were completed by the Additional Deputy Commercial Tax Officer,

Chepauk Assessment Circle, Madras-2. Due to inadequate staff in the company there were delay in filing the annual return in form A-1 for the

assessment years 1972-73 and 1973-74. The Additional Deputy Commercial Tax Officer, Chepauk Assessment Circle, made an assessment and

imposed penalty of Rs. 7,413 by his proceedings No. 48984/72-73 dated 14th November, 1977. The petitioners preferred appeal before the first

respondent and the first respondent modified the same in appeal No. 52 of 1978 dated 17th June, 1978, quantifying the penalty at Rs. 4,609. The

first respondent has not accepted the contention that the mere delay in filing the A-1 return could not be taken as a ground for levying penalty.

Likewise for the assessment year 1973-74 the Additional Deputy Commercial Tax Officer, Chepauk Assessment Circle, levied a penalty of Rs.

10,124 in his order T.N.G.S.T. No. 48984/73-74 dated 14th November, 1977. The first respondent modified the order and quantified the

penalty to the sum of Rs. 6,750 in his appeal No. 12 of 1978 dated 18th April, 1978. The second respondent gave effect to the orders of the first

respondent subsequently.

5. Due to heavy losses suffered by the petitioner-company and lack of cash resources the modified penalty as taxed by the first respondent for

both the years could not be remitted in time and thereupon the Additional Deputy Commercial Tax Officer, Chepauk Assessment Circle, initiated

proceedings u/s 26 of the Tamil Nadu General Sales Tax Act, 1959 and took recovery proceedings. The petitioners'' representation to the third

respondent for orders of stay and for grant of time to pay the arrears ended without success. While that being so, separate proceedings were

initiated by the assessing authority for the penalty u/s 24(3) of the Act. The petitioners filed a writ petition in this Court in W.P. No. 2498 of 1981

and obtained an order of stay of the operation of the proceedings of the second respondent.

6. It is now represented by the learned counsel for the petitioners that W.P. No. 2498 of 1981 was allowed.

7. Thereupon the petitioners on 27th April, 1981 filed a petition for rectification u/s 55 of the Tamil Nadu General Sales Tax Act 1959 praying for

the cancellation of the penalty. The petitioners contended that the penalty has been levied in respect of book turnover which has been adopted

without estimate or best judgment assessment and therefore there was no jurisdiction to levy penalty u/s 12(3) as per the judgment of the Supreme

Court in [1971] 28 STC 700 (State of Madras v. S. G. Jayaraj Nadar and Sons).

8. Now during the course of the argument, Mr. Natarajan, learned counsel for the petitioners, referred to the ratio decidendi in [1980] 45 STC

152 (Kuppuswamy Mudaliar & Sons v. Board of Revenue).

9. It is now contended on behalf of the petitioners that as per the judgment of the Supreme Court in [1971] 28 STC 700 (State of Madras v. S. G.

Jayaraj Nadar & Sons), the authorities have no jurisdiction to levy penalty u/s 12(3) of the Act and that the penalty had been levied in respect of

book turnover which had been adopted without estimate or best judgment assessment. This being an error apparent on the face of the record, the

first respondent ought to have rectified the same. This is the only point that is very much stressed by Mr. Natarajan, learned counsel for the

petitioners. He submits that a mere reading of section 55 of the Act would show that the aggrieved person can point out the error that had

occurred in the judgment within 3 years from the date of the order. In the instant case a petition u/s 55 of the Act has been filed after the appeal

time is over. It is not as if that the petitioners have got no remedies. But he had not preferred any revision or any further appeal under the

provisions of the enactment. Yet, the grievance of the petitioners ought to have been taken into consideration. This argument so advanced is not

only untenable but also unsustainable. The decisions cited by the learned counsel for the petitioners are not helpful to them. In those decisions

nowhere it is stated that without the petitioners exhausting all his remedies by way of further proceedings either by way of further appeal or by way

of revision, cannot invoke the provisions of section 55 of the At. As stated earlier, in the instant case no appeal or revision has been preferred against the order. After the appeal time was over, the petitioners had come forward to say that some serious errors had crept in and to rectify the

same, the petitioners are now invoking section 55 of the Act. What section 55 of the Act contemplates is that within three years from the date of

order, a petition to rectify the error apparent on the face of the record has to be filed. The petitioners in the instant case had got the right of appeal

to the higher forum which they had not resorted to. They plead ignorance. Ignorance of law is no excuse.

10. In the instant case before us, it is submitted that penalty u/s 12(3) of the Tamil Nadu General Sales Tax Act, 1959 for wilful non-disclosure of

turnover was levied at Rs. 7,413 and Rs. 10,124 respectively for the years 1972-73 and 1973-74, and that the said penalty was subsequently

reduced to a sum of Rs. 4,609 and Rs. 6,750 respectively for the years 1972-73 and 1973-74. On the orders of the first respondent on 7th

September, 1978, the petitioners failed to pay the penalty till October, 1980. Therefore coercive steps were taken to collect the arrears of penalty

from the petitioners. The assessments and consequent revisions in question were made after observing all legal formalities. It is submitted on behalf

of the respondents herein that recovery proceedings for the collection of arrears of penalty were also initiated as per the Act. There is no illegality

or arbitrations in the action of the first respondent.

11. According to the respondents, no rectification is necessary, for there is no error apparent on the face of the records. This Court also does not

find any error apparent on the face of the record, requiring rectification. ""Rectification"" means ""taking out mistakes from."" The provision of section

55 of the Act is only to rectify any error apparent on the face of the record. On a careful perusal of the affidavit accompanying this petition, it is

clear that the petitioners wanted redressal of the grievance which they entertained as a result of the order which could have been the subject-matter

of appeal or revision which was failed to be filed by the petitioner within the time fixed as appeal time or revision time in the enactment. When such

a right - royal method is available for the petitioners to approach the higher forum to get redressal of their grievance, they ought to have availed

that. Instead of doing that and after the expiry of three years, they cannot approach the authorities with a petition u/s 55 of the Act because section

55 of the Act is only with respect to rectification of errors apparent on the face of the record, such as clerical errors, typing mistakes, etc.

Therefore the petitioners cannot approach the authorities with a petition u/s 55 of the Act against an order which could be the subject-matter of

appeal or revision. Under the circumstances, the contentions raised on behalf of the petitioners in this writ petition, though interesting and thought

provoking, yet deserve to be rejected. There is no merit in this writ petition. Hence this writ petition is dismissed. Under the circumstances, there is

no order as to costs.

12. Writ petition dismissed.

