(2007) 11 MAD CK 0222

In the Madras High Court

Case No : Writ Petition No. 9602 of 1999

Sree Visalam Chit Funds Ltd. APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 22-11-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Madras City Municipal Corporation Act, 1919 — Section 138B(1)
Tamil Nadu District Municipalities Act, 1920 — Section 124(D)(4), 124D
Tamil Nadu Tax on Professions, Trades, Callings and Employments Act, 1992 — Section 3(5)

Citation : (2007) 11 MAD CK 0222

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : S. Visvanathan, for the Appellant; V. Manoharan, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—Heard the learned Counsels appearing for the petitioner as well as for the respondents.

2. It is stated on behalf of the petitioner that the petitioner is a Company incorporated under the Companies Act having its Head Office at

Tirunelveli and its Administrative Office at Pallathur. The Central Office is at Chennai and there are branches in several places in the State of Tamil

Nadu, coming within the limits of the respective Corporations, Municipalities and Panchayats. The petitioner is carrying on business in chits in

accordance with the provisions of the Chit Fund Act, 1982, and the rules framed thereunder.

3. It is further stated that before the enactment of the Tamil Nadu Tax on Professions, Trades, Callings and Employment Act, 1992 (Tamil Nadu

Act 24 of 1992), the local bodies were empowered to levy professional tax in accordance with the provisions contained in The Madras City

Municipal (Corporation) Act, 1919, and the Acts relating to the other Corporations, the District Municipalities Act, 1920 and the Panchayats Act,

1958.

4. It is further stated that in case, a person carries on professional or business activities under more than one local authority, it was sufficient if the

person paid the highest amount of tax to any one local authority. The State Government would apportion the tax paid amongst all the concerned

local authorities. When the problem of different local authorities levying professional tax arose, the Government had issued G.O.Ms. No. 1575,

Rural Development and Local Administration Department, dated 19.10.1982, stating that a Company is liable to pay professional tax to only one

of the local bodies and not to every local body where it transacts business. However, after The Tamil Nadu Tax on Professions, Trades, Callings

and Employment Act, 1992, was enacted, consolidating the various laws providing for the levy and collection of professional tax, the various local

authorities were demanding the petitioner to pay professional tax wherever its business was transacted. Therefore, the petitioner was constrained

to move this Court by way of a writ petition in W.P. No. 2112 of 1996. By an order passed in W.M.P. No. 3261 of 1996, interim injunction had

been granted by this Court restraining the various local authorities from demanding professional tax from the petitioner. However, after the Tamil

Nadu Tax on Professions, Trades, Callings and Employment Act, 1992 had been repealed and amendments had been introduced in The Tamil

Nadu Municipal Act, 1920, vide The Tamil Nadu Act No. 59 of 1998, the various authorities had started demanding payment of professional tax

from the petitioner wherever its business was being transacted. In such circumstances, the petitioner has been constrained to file the present writ

petition, invoking Article 226 of the Constitution of India.

5. In the counter-affidavit filed on behalf of the respondents, the claims made by the petitioner are denied and it has been stated that the petitioner

is liable to pay professional tax demanded by the local authorities wherever the petitioner''s business is being transacted.

6. It has also been stated that Section 124-D of The Tamil Nadu District

Municipalities Act, 1920, as amended by the Tamil Nadu Act 59 of

1998, is the charging Section. Section 138-B (1) of the Chennai City Municipal Corporation Act, empowers the council to levy tax on Profession,

Trade, Calling and Employment. Similarly, Section 124-D of The Tamil Nadu District Municipalities Act, 1920, empowers the Municipal Council

to levy tax on profession, trade, calling and employment. As per Section 124-(D)(4), it has been stated that where a Company or person proves

that the professional tax had been paid to any local authority, such Company or person shall not be liable, by reason merely of change of place of

business, profession, trade, calling or employment, to pay the tax to other local authorities.

7. It has also been stated that the petitioner Company had not changed their place of business. Instead, they are running their business

simultaneously in various towns and therefore, the local authorities are charging the professional tax in their respective areas coming under their

jurisdiction. The contention of the petitioner that the Company is liable to be levied only a single professional tax by any one authority at the highest

rate, relying upon Section 3(5) of Tamil Nadu Act 24 of 1992, is not correct. Section 3(5) of the Act is applicable only to the person who resides

within the limits of any local authority and exercises his profession, trade, calling or employment and transacts business within the limits of any other

local authority. The said Section will not be applicable to a Company which has branches in many towns and transacts business in all such places.

8. Considering the contentions raised on behalf of the petitioner and in view of the prayer sought for in the present writ petition, it is clear that the

petitioner, who is in chit fund business is prepared to pay professional tax, as levied by the Corporation of Chennai and not to the other local

authorities. It has also been contended on behalf of the petitioner, citing a decision of the Supreme Court in M/s. Shriram Chits and Investment (P.)

Ltd. Vs. Union of India and others, , that chit fund companies are not liable to pay professional tax, under the provisions of the Chit Funds Act,

1982. It has also been contended that Section 3(5) of the Tamil Nadu Act 24/92 is applicable only to persons residing within the jurisdictional

limits of a local authority and carrying on business and it would not apply to a company having branches in many towns in various places coming under the jurisdiction of a number of local authorities.

9. Considering the contentions raised on behalf of the petitioner, it is clear that the requirement of the petitioner to pay professional tax would

depend on various factual aspects connected with the business of the petitioner, as well as the corporate nature of the petitioner. In such

circumstances, it is not open to the petitioner to pray for a writ of mandamus, under Article 226 of the Constitution of India, seeking for a remedy

in the nature of prohibiting various local authorities from charging professional tax from the petitioner in relation to the business carried on by the

petitioner. However, it could be open to the petitioner Company to challenge the specific orders that may be issued by the local authorities stating

that it is not liable to pay the professional tax to the concerned local authority. In such circumstances, it is not proper for this Court to pass a

general order, as prayed for by the petitioner in the present writ petition. Therefore, the writ petition stands dismissed, making it clear that the

dismissal of the writ petition will not preclude the petitioner Company from challenging the individual orders, that may be issued by the local

authorities concerned, claiming payment of professional tax relating to its chit fund business.

