(2014) 10 MAD CK 0258

In the Madras High Court

Case No : Writ Petition No. 19616 of 2011

Sunder Electronics APPELLANT

Vs

The Commercial Tax Officer RESPONDENT

Date of Decision : 14-10-2014

Acts Referred:
Tamil Nadu Value Added Tax Act, 2006 — Section 19(2), 19(20), 22(3)

Citation : (2014) 10 MAD CK 0258

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Judgement

T.S. Sivagnanam, J.—By consent of the learned counsel on either side, the writ petition is taken up for final disposal.

2. Heard Mr. C. Sivasubramanian, learned counsel appearing for the petitioner and Mr. Manokar Sundaram, learned Additional Government Pleader for the respondent.

3. In this writ petition, the petitioner seeks to issue a writ of certiorari to quash the impugned proceedings of the respondent issued in TIN 33964220567/2007-2008 dated 27.07.2011.

4. The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short the Act) and has filed this writ petition, challenging the notice issued by the respondent dated 27.07.201, where-under the respondent proposed to reject the petitioner''s return filed for the assessment year 2007-08, as being incorrect and incomplete and proposed the total and taxable turnover for the year 2007-08 under Section 22(3) of the Act. At the time when the writ petition was pending, several writ petitions were filed, challenging the provisions of Section 19(20) inserted to the Act amended vide Tamil Nadu Value Added Tax Act (Second Amendment Act) 2010 with effect from 19.08.2010.

5. In the affidavit filed in support of the petition, the petitioner stated that stay

has been granted by this Court in those cases. At that juncture, the petitioner should not be called upon to reply to the notice dated 27.07.2011.

6. Learned counsel for the petitioner submitted that earlier notice was issued to the petitioner on 13.09.2010 for which the petitioner submitted its objection on 06.10.2010 and without taking any action, now the present impugned notice has been issued. Further, learned counsel submitted that recent circular issued by the Commissioner of Commercial Taxes dated 04.11.2013 deals with the steps to be followed, while finalizing the assessment, which was brought into force in Section 19(2) of the Act.

7. It is seen that the writ petition was entertained by this Court, since the challenge to the validity of Section 19(2) of the Act was pending at the relevant point of time. It is not disputed by the petitioner that the validity of the said enactment was upheld by the Hon''ble Division Bench of this Court by order dated 17.07.2013. Therefore, the petitioner cannot maintain this writ petition against the impugned proceedings, which is only a show cause notice, since the statutory provision has been upheld to be a valid piece of legislation. Therefore, only remedy left to the petitioner is to submit its reply to the impugned proceedings.

8. It is worthwhile to mention that the Commissioner of Commercial Taxes has issued a circular dated 04.11.2013, listing out steps to be followed, while finalizing the assessment, which are as follows:

1. Identification of cases in which huge ITC is accumulated on account of lesser sale price than the purchase price.

2. The above facts have to be ensured by verifying the purchase and sale price per unit.

3. If the above two things are found in a business concern, the quantum of ITC, which exceeds the output tax shall be reversed.

9. In the light of the above, the impugned proceedings cannot be quashed. Accordingly, the prayer sought for by the petitioner is rejected. The petitioner is directed to submit its reply to the impugned notice within a period of four weeks from the date of receipt of a copy of this order. On receipt of the same, the respondent shall afford an opportunity of personal hearing to the petitioner and decide the issue bearing in mind the direction issued by the Commissioner of Commercial Taxes in the Circular dated 04.11.2013. Till final orders are passed by the respondent in terms of the aforesaid terms, no coercive steps shall be taken against the petitioner, since the petitioner had the benefit of interim injunction from August, 2011. It is needless to mention that the petitioner shall co-operate with the respondent for the expeditious disposal.

10. With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.