(2015) 02 MAD CK 0204

In the Madras High Court

Case No : Writ Petition No. 3820 of 2015

Sunrise Chennai Distributors Private Ltd. APPELLANT

Vs

Commercial Tax Officer RESPONDENT

Date of Decision : 16-02-2015

Acts Referred:
Tamil Nadu Value Added Tax Act, 2006 — Section 19(11), 22, 23, 24, 25

Citation : (2015) 02 MAD CK 0204

Hon'ble Judges : S. Vaidyanathan, J.

Bench : Single Bench

Advocate : C. Bakthasiromoni, for the Appellant; Manoharan Sundaram, Additional Government Pleader, Advocates for the Respondent

Judgement

S. Vaidyanathan, J.—Heard the learned counsel for the petitioner and the learned Additional Government Pleader. With the consent of either side, this writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner has filed this writ petition seeking issuance of Certiorarified Mandamus to call for the records of the respondent in his proceedings in TIN No. 33631562900/2013-14 dated 14.01.2015 and quash the above impugned proceedings under TNVAT Act and to direct the respondent to pass revised orders by providing an opportunity of personal hearing based on the representations made by the petitioner on 19.01.2015.

3. The learned counsel for the petitioner referred to paragraph No. 5 of the decision of this Court made in W.P.No. 30088 of 2014 dated 19.11.2014 which reads as follows:

"5. Accordingly, without setting aside the impugned proceedings, dated 15.10.2014, the matter is remanded to the respondent with a direction to the respondent to consider the petitioner''s application dated 29.10.2014 which has been filed under Section 84 of TNVAT Act, on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner. The petitioner is directed to enclose a copy of the application dated 29.10.2014 along with a copy of this order and forward the same to the respondent. The respondent shall issue notice to the petitioner herein and thereafter, pass orders on merits and in accordance with law, within a period of three weeks from the date on which the copy of the order is received by the respondent, till then, no coercive steps shall be taken by the respondent."

and contended that no opportunity was given to him.

4. The learned counsel for the petitioner further submitted that the petitioner was not furnished with password. Hence, he was not able to file the returns electronically and the returns have to be filed only electronically and not manually. Since the departmental password was not given to uphold datas of the monthly returns for e- filing as every dealer used to be given password for filing monthly returns, the petitioner approached the respondent to issue password and the same was given only on 30.06.2014 and that petitioner has filed returns for the business only from 01.07.2014. The petitioner has approached this Court by filing this writ petition by referring the relevant portion of the decision of this Court made in W.P.No. 30088 of 2014 dated 19.11.2014 which is extracted supra and prayed this Court for a direction to the respondent to not to take any coercive steps and provide opportunity of being heard and thereafter orders shall be passed on merits and in accordance with law.

5. The petitioner''s contention is that since there was no password and that fault is on the part of the department, he should not be foisted with the liability. He also contended that provisions of Section 19(11) of the TNVAT Act is also questioned in the Hon''ble Supreme Court and the matter is also pending before the Hon''ble Supreme Court.

6. In reply, the learned Additional Government Pleader referred to paragraph No. 4 of the decision of this Court made in W.P.No. 30088 of 2014 dated 19.11.2014 and the same is extracted hereunder:

"4.It has to be pointed out that the challenge to the provisions of Section 19(11) of TNVAT Act was rejected by the Honourable Division Bench of this Court and the matter is now pending before the Honourable Apex Court. Further, the petitioner having raised certain factual contentions, which has prevented them from filing returns electronically, this Court is of the view that the respondent should consider the facts placed by the petitioner in its application dated 29.10.2014 under Section 84 of TNVAT Act."

and contended that provisions under Section 19(11) of the TNVAT Act will be applicable in cases where order of assessment was passed in the previous year and which is the subject matter of the proceedings pending in the Court. In this case, this is the first assessment order and hence provisions under Section 19(11) of the TNVAT Act will not be applicable to the facts of this case. Pursuant to the orders of this Court earlier made in W.P.No. 30088 of 2014 dated 19.11.2014, the petitioner was given ample opportunity to put forth his defence and the same was not accepted by the authority and the authority had necessarily to pass orders within three weeks as per the directions of this Court.\\

7. This Court feels it useful to extract some relevant sections from the Tamil Nadu Value Added Tax Act, which reads as follows:

"Section 54. Powers of revision of [Joint Commissioner]

(1) Any person objecting to an order passed or proceeding recorded under this Act for which an appeal has not been provided for in section 51 or section 52 may within a period of thirty days from the date on which a copy of the order or proceeding was served on him, in the manner prescribed file an application for revision of such order or proceeding to the [Joint Commissioner]

Provided that the [Joint Commissioner] may within a further period of thirty days admit an application for revision presented after the expiration of the first mentioned period of thirty days, if he is satisfied that the applicant had sufficient cause for not presenting the application within the first mentioned period.

Section 55.[(1)The Additional Commissioner may, of his own motion, call for and examine any assessment deemed to have been made under sub- section (2) of section 22 or an order passed or proceeding recorded by the appropriate authority under sub-sections (4), (5) and (6) of section 22 or sections 24, 25, sub-sections (1), (2), (3), and (4) of section 27, section 28 or section 29 or an order passed by the joint Commissioner under sub-section (1) of section 53 or sub-section (3) of section 54 and if such assessment or order or proceeding recorded is prejudicial to the interests of revenue, may make such inquiry or cause such inquiry to be made and, subject to the provision of this Act, may initiate proceeding to revise, modify or set aside such assessment or order or proceeding and may pass such order thereon as he thinks fit.]

(2) The [Additional Commissioner] shall not initiate proceedings against any such order or proceeding referred to in sub- section (1), if -

(a) the time for appeal against the order has not expired; or

(b) the order has been made the subject of an appeal to the Appellate Tribunal, or of a revision in the High Court; or

[(c) more than six years have expired after the date of assessment:]

(3) No order under this section adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard.

(4) In computing the period referred to in clause (c) of sub-section (2), the time, during which the proceedings before the [Additional Commissioner] remained stayed under the orders of a Civil Court or other competent authority shall be excluded.

Section 84. Power to rectify any error apparent on the face of the record:

(1) An assessing authority or an appellate or revising authority (including the Appellate Tribunal) may, at any time within five years from the date of any order passed by it, rectify any error apparent on the face of the record:

Provided that no such rectification which has the effect of enhancing an assessment or any penalty shall be made unless such authority has given notice to the dealer and has allowed him reasonable opportunity of being heard.

(2) Where such rectification has the effect of reducing an assessment or penalty, the assessing authority shall make any refund, which may be due to the dealer.

(3) Where any such rectification has the effect of enhancing an assessment or penalty, the assessing authority shall give the dealer a revised notice of assessment or penalty and thereupon the provisions of this Act and the rules made thereunder shall apply as if such notice had been given in the first instance.

(4) The powers under sub-section (1) may be exercised by the assessing authorities even though the original order of assessment, if any, passed in the matter has been the subject matter of an appeal or revision.

(5) The provisions of this Act relating to appeal and revision shall apply to an order or rectification made under this Section as they apply to the order in respect of which such order of rectification has been made.

Section 23. Procedure when assessee claims identical question of law is pending before High Court or Supreme Court.-

(1) Notwithstanding anything contained in this Act, where an assessee claims that any question of law arising in his case for an assessment year, which is pending before the assessing authority (such case being hereafter in this section referred to as the relevant case) is identical with a question of law arising in his case for another assessment year, which is pending before the High Court or Supreme Court (such case being hereafter in this section referred to as the other case), he may furnish to the assessing authority a declaration in the prescribed form for verification in the prescribed manner and if the assessing authority agrees to apply in the relevant case the final decision on the question of law in the other case, he shall not raise such question of law in the relevant case. (2)The assessing authority may, by order, in writing,-

(i) admit the claim of the assessee if it is satisfied that the question of law arising in the relevant case is identical with the question of law in the other case; or

(ii) reject the claim if it is not satisfied. (3)Where a claim is admitted under sub-section (2), the assessing authority may pass an order disposing of the relevant case without awaiting the final decision on the question of law in the other case. (4)When the decision on the question of law in the other case becomes final, it shall be applied to the relevant case and the assessing authority shall, if necessary, amend the order referred to in sub- section (3) in conformity with such decision.

(5) An order under sub-section (2) shall be final and shall not be called in question in any proceeding by way of appeal, reference or revision under this Act."

8. The learned counsel for the petitioner submitted that provisions under Section 23 of the TNVAT Act is not applicable to the facts of this case. There is no dispute with regard to the fact that there is no assessment order in the previous year and the contention that similar issue is pending before the Hon''ble Supreme Court cannot be accepted as admittedly, the case of the petitioner does not fall under Section 23 of the TNVAT Act against this impugned order passed under Section 84 of the TNVAT Act against which remedy lies under Section 54(1) of the TNVAT Act. If the petitioner has any grievance against the order that may be passed, if he is so aggrieved, it is open to the petitioner to approach the competent authority under Section 55 of the TNVAT Act. Since there is dispute about the applicability of the provisions of the Act, this Court is not inclined to interfere with the impugned order.

9. Hence this writ petition is dismissed. The period during which the writ petition is pending before this Court including the date of the copy of the order made ready has got to be excluded for the purpose of limitation. No costs. Consequently, the connected miscellaneous petition is closed.

