(2011) 02 MAD CK 0480

In the Madras High Court

Case No : Writ Petition (MD) No. 11911 of 2008 and M.P. (MD) No. 1 of 2008

Taherali Industries and Projects (P) Ltd APPELLANT

Vs

Appellate Deputy Commissioner (CT), Thanjavur and Another RESPONDENT

Date of Decision : 10-02-2011

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 3B, 55, 7C, 7C(1), 7C(2)

Citation : (2012) 47 VST 482

Hon'ble Judges : K.K. Sasidharan, J

Bench : Single Bench

Advocate : P. Radhakrishnan, for the Appellant; S.C. Herold Singh, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Sasidharan, J.—This writ petition is directed against the order dated November 14, 2008 on the file of the Appellate Deputy Commissioner (CI), Thanjavur, whereby and whereunder the application filed by the petitioner for rectification u/s 55 of the Tamil Nadu General Sales Tax Act, 1959, was rejected.

Background facts

The petitioner is a registered dealer on the file of the second respondent. The petitioner was appointed as a sub-contractor by M/s. IVRCL Infrastructure and Project Limited, Chennai, who is the principal contractor of Tamil Nadu Water and Drainage Board, Eastern Region for their Vedarniyam Combined Water Supply Scheme. The petitioner appear to have commenced their work during the assessment year 2001-02. They have filed their first return under the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as, "the TNGST Act") on March 7, 2002 and opted for payment of tax on the sub-contract u/s 7C of the TNGST Act.

2. The second respondent, while passing the assessment order for the year 2001-02, intimated the petitioner that they were ineligible to make payment u/s

7C of the TNGST Act on the ground that such option has to be exercised at the time of filing the first return of the year. The second respondent levied tax u/s 3B of the TNGST Act. The said order was challenged before the Appellate Deputy Commissioner (CT). The appeal was dismissed by holding that the assessment u/s 3B of the TNGST Act was justified.

3. While the matters stood thus, the second respondent passed the order of assessment for the year 2002-03. While passing the order of assessment, the second respondent has accepted the payment of tax at compounded rates u/s 7C of the TNGST Act on the very same sub-contract relating to Vedarniyam Combined Water Supply Scheme. Therefore, the petitioner was satisfied that the authority has accepted the eligibility of the petitioner to pay tax at compounded rates u/s 7C of the TNGST Act. This made him to file an application u/s 55 of the TNGST Act for rectification.

4. The Appellate Deputy Commissioner considered the rectification petition. It was found that the petitioner had filed the monthly return for the year 2001-02 belatedly. Therefore, the Appellate Deputy Commissioner was of the opinion that there was no merit in the request made by the petitioner to rectify the earlier order invoking section 55 of the TNGST Act. Accordingly, the application was rejected. Feeling aggrieved by the said order, the petitioner is before this court.

Submissions

5. The learned counsel for the petitioner contended that with respect to the assessment year 2002-03, the option given by the petitioner u/s 7C was accepted by the assessing authority. Therefore, even in respect of the assessment year 2001-02, the said consideration should have been shown. According to the learned counsel, the contract in question was a continues one and as such, it was not open to the assessing authority to assess one part of the transaction u/s 7C of the TNGST Act and another part u/s 3B. The leaned counsel further contended that it was only to rectify the error apparent on the face of the record, the subject application was preferred by the petitioner and it was erroneously rejected and as such, the matter requires consideration by this court.

6. The learned Government Advocate justified the order passed by the first respondent.

Discussion

7. The only issue to be decided in this writ petition is as to whether the petitioner is entitled for an order of rectification on the basis of a subsequent order permitting him to pay tax u/s 7C of the TNGST Act.

8. The dispute relates to the interpretation and application of section 7C(2) of the TNGST Act. The said provision reads thus :

7C. (2) Any dealer who executes (works contract) may apply to the assessing authority along with the first monthly return for the financial year, his option to pay the tax under sub-section (1) and shall pay the tax during the year in monthly installments and for this purpose, he shall furnish such return within such period and in such manner as may be prescribed :

Provided that the option under this sub-section for the financial years commencing on the 1st day of April, 1993 and the 1st day of April, 1994, shall be exercised on or before the 30th day of June, 1994 :

Provided further that the option under this sub-section in respect of works contract other than civil works contract for the financial year commencing on the 1st day of April, 1999 shall be exercised on or before the 31st day of January 2000.

9. Section 7C(2) of the TNGST Act gives an option to the assessee to pay tax u/s 7C(1) provided the assessee exercise the option along with the first monthly return for the financial year. Therefore, the whole issue revolves on the question as to whether the petitioner has submitted his first monthly return within the time permitted by law for the purpose of availing of the concession u/s 7C(2) of the TNGST Act.

10. The assessment was pertaining to the year 2001-02. The petitioner was expected to file his first monthly return for the month of April 2001 on or before May 20, 2001. The petitioner has not filed the monthly return within the time permitted by law and no option was exercised to pay tax u/s 7C(1) of the TNGST Act. Therefore, the case of the petitioner for payment u/s 7C of the TNGST Act was rightly rejected by the assessing authority and it was confirmed in appeal.

11. It is true that for the subsequent year 2002-03, the request to pay tax at compounded rates u/s 7C of the TNGST Act was accepted by the assessing authority. The assessment order for the year 2002-03 shows that the option for payment of tax u/s 7C of the TNGST Act was exercised within the time permitted by law and it was accompanied by the first monthly return. Accordingly, the petitioner was permitted to pay tax u/s 7C of the TNGST Act.

12. The petitioner now seeks rectification of the order for the year 2001-02 solely on account of the subsequent payment u/s 7C of the TNGST Act for the year 2002-03. It is true that the contract, which originally commenced from the year 2001-02, continued for the year 2002-03. It is also true that section 7C(3) provides that where a dealer has exercised his option under sub-section (1) of section 7C in respect of each works contract, such option shall be final till the completion of such works contract. However, the said provision has to be read, in the light of section 7C(2) of the TNGST Act. The said provision clearly gives an indication that in order to avail of the payment of tax u/s 7C(1), the assessee should exercise its option along with the first monthly return for payment of the tax during the year. Therefore, the term "year" assumes significance. When it is made out that the petitioner has not exercised their option during the assessment year 2001-02, they cannot rectify the order for the said assessment year on the basis of the assessment order for the subsequent year, which was

made on account of the exercise of option during the said financial year.

13. The application filed by the petitioner was for the purpose of rectification. The issue regarding the payment of tax u/s 7C of the TNGST Act was considered by the assessing authority as well as by the appellate authority. The claim made by the petitioner was rejected on merits. The order is now sought to be rectified on the basis of a subsequent order permitting payment of tax u/s 7C of the TNGST Act. The permission granted to pay tax u/s 7C(1) for the assessment year 2002-03 was made only on account of the exercise of option during the said year. Therefore, the permission granted for the year 2002-03 would not help the petitioner to rectify the assessment order passed for the year 2001-02. Therefore, I am of the view that the first respondent has rightly rejected the application submitted by the petitioner for rectification. I do not find any error or illegality in the said order warranting interference by this court, by exercising the power of judicial review. In the upshot, I dismiss the writ petition. Consequently, the connected miscellaneous petition is also dismissed. No costs.