(2007) 03 MAD CK 0361

In the Madras High Court

Case No : Writ Petition No. 10591 of 2007 and M.P. No. 1 of 2007

Tamil Nadu Petro Products Ltd. APPELLANT

Vs

Assistant Commissioner (CT) and Others RESPONDENT

Date of Decision : 22-03-2007

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 3(4)

Citation : (2009) 20 VST 327

Hon'ble Judges : K. Raviraja Pandian, J

Bench : Single Bench

Advocate : N. Inbarajan, for the Appellant; A. Thirugnanam, Special Government Pleader, for the Respondent

Judgement

K. Raviraja Pandian, J.—The prayer in the writ petition is for the issuance of a writ of certiorarified mandamus to direct the third respondent to re-dispose the stay petition in T.P. No. 92 of 2004.

2. The case of the petitioner is that in respect of the assessment year 1996-97, an assessment order has been made under CST on the ground that the transactions of the petitioner are inter-State sales. That order has been confirmed by the appellate authority and the matter is now pending before the Tribunal. During the pendency of the appeal before the Tribunal, at the instance of the petitioner, in a stay application for collection of taxes, the Tribunal has passed an interim order granting stay of payment of 75 per cent of the disputed tax on condition of the petitioner making the balance disputed tax of 25 per cent on or before April 10, 2007 and directed to furnish security for the remaining amount. The correctness of the said order is now canvassed before this Court.

3. It is contended that for the assessment year 2001-02, the very same transaction has been considered by the assessing officer u/s 3(4) of the Tamil Nadu General Sales Tax Act, 1959 as a branch transfer.

4. Such transaction cannot be assessed as an inter-State sale for the assessment

year 1996-97. Whether it is a branch transfer or inter-State sale is a question of fact which has been seized by the appellate authority. As a matter of fact, that has been held against the petitioner by the assessing officer and the assessing officer''s order has been confirmed by the first appellate authority. Hence, this Court, at this point of time, need not go into the correctness or otherwise of the order, rather it would not go also.

5. It is submitted by the learned Counsel for the petitioner that as the appeal is of the year 2003, the Tribunal may be directed to take up the main appeal itself for consideration and till the disposal, the interim order passed by the Tribunal can directed to be kept in abeyance.

6. I have heard the argument of the learned Counsel and also heard the learned Government Advocate who argued that the financial year is going to be expired within a few days. If this Court has interfered with this sort of conditional order passed by the Tribunal, the revenue of the Government will be seriously eroded and public welfare activities could not be entertained by the respondent. The budget session of the Government is also about to be commenced. In such circumstances, in fiscal statute, the order passed by the Tribunal directing him to pay only 1/4th of the amount need not be interfered with.

7. Upon hearing the counsel, taking note of the fact that the impugned proceedings is only an interim order and a substantial relief of 75 per cent of the payment of tax as quantified by the lower authorities has been granted and only 25 per cent of the disputed tax was directed to be paid by the petitioner and having regard to the fact that as contended by the learned Government Advocate that the financial year is going to be expired by few days, taking into consideration of the fact that the major portion of the relief has been granted in favour of the petitioner, I am of the view that in the interlocutory stage the impugned order in this writ petition need not be interfered with in respect of payment of tax as directed. However, the other direction for furnishing of security is hereby modified by directing the petitioner to furnish personal bond of the Directors of the company. However, if the Tribunal is taking up the appeals of the year 2003, the Tribunal is directed to take up the petitioner''s appeal also, if it is otherwise ripe for hearing, without unduly altering the roaster maintained by the Tribunal. With the above observations, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

