(2006) 09 MAD CK 0273

In the Madras High Court

Case No : Writ Petition No''s. 14826, 17048, 17049, 18321, 18517, 22381, 22470, 22551, 22630, 23071, 24079, 24287, 24740, 27239, 28627, 29516, 29517 and 29538 of 2004 and 1295, 2618, 2619, 9350, 15355 and 15356 of 2005 and W.P. M.P. No''s. 17614, 20219, 20220, 2182

Tara Dyers APPELLANT

Vs

State of Tamil Nadu and Another RESPONDENT

Date of Decision : 01-09-2006

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 3B, 3B(1)

Citation : (2008) 16 VST 557

Hon'ble Judges : K. Raviraja Pandian, J

Bench : Single Bench

Advocate : T. Ramesh, S. Sivanandam, R. Mahadevan, Anitha Sumanth, R. Hemalaltha, Ibrahim Ali, Senniappan, S.S. Swaminathan, A. Ravichandran, S. Ramanathan, R. Ravi and Pushya Sitharaman, for the Appellant; Hazi Nazruddin, Special Government Pleader, for the Respondent

Judgement

K. Raviraja Pandian, J.

W.P. Nos. 17048, 17049, 18321, 22831, 23071, 24079, 24287, 28627, 29516, 29517 of 2004 and 2618, 2619, 9350, 15355 and 15356 of 2005:

1. In all these cases, the assessing officers have issued notices to the respective assessees on forming an opinion that the transaction of dye carried on by the petitioners/assessees would amount to works contract u/s 3B of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as, "the Act") and on that basis directed the assessees to file A1 returns.

2. After hearing the learned Counsel for the respective petitioners as well as the learned Government Pleader, this Court is of the view that what is impugned is only notice requiring the assessees/petitioners to file Al returns in respect of their transaction. The assessees/petitioners can file their returns or objections, if any,

to the notice by putting forth their case and as to what is the activity of the petitioners with supporting materials, so as to enable the assessing officer to decide the issue. The assessing authority is entitled to require the assessees/ petitioners to file their returns. Likewise the assessees are also entitled to make their submissions by way of objections to the view.

3. Hence, these writ petitions are disposed of by permitting the petitioners to file their objections or A1 returns in response to the notice, which are impugned in these writ petitions, within a period of ten days from the date of receipt of copy of this order and on such filing, the respondents are directed to proceed further in accordance with law. While doing so, each and every objection of the petitioners has to be considered and the reasons must be recorded by the assessing officers either for accepting or rejecting the same.

W.P. Nos. 14826, 18517 and 22470 of 2004 and 1295 of 2005:

4. These writ petitions are filed against the orders of assessment. In these cases, the objections were called for by the assessing officer from the assessees and the objections have also been filed by the assessees. However, while framing the assessment, the objections filed by the assessees have not been considered and the assessing officers have relied on certain decision rendered by Bombay High Court for reaching the conclusion.

5. There cannot be any impediment for the assessing authority to rely on judgments of other High Courts. But at the same time, it is also the duty on the part of the assessing officer to give reasons for rejecting the objections raised by the assessees pointing out the judgments rendered by this court. It is the further duty of the assessing officer to give reasons as to why the judgments relied on by the assessees are not applicable to their case. This aspect of the matter has been given a go bye by the assessing officers and none of the objections raised by the assessees have been considered by them. But on the contrary, the assessing officers reached the conclusion based on their own reasoning, which is impermissible in law. Hence, all the assessment orders are hereby set aside by allowing the writ petitions and the matter is remitted back to the respective assessing officers to reconsider the issue by giving detailed reasons'' for the objections raised by the petitioners either by accepting or rejecting the same.

W.P. No. 22551 of 2004:

6. This case has been filed against the assessment order dated May 26, 2004. In the affidavit filed in support of the writ petition, so many grounds have been taken and the grievance of the petitioner is that the work carried on by him would not come under the purview of works contract, i.e., u/s 3B of the Act. However, during the course of assessment proceedings, the petitioner was issued with the pre-assessment notice for the assessment year 2002-03. As seen from the assessment notice dated May 6, 2004, it is calling upon the petitioner to file objections. From the assessment order, it could be seen that the petitioner has not sent any objections for that notice. However, in view of the fact that the writ

petition has been filed in the year 2004, and it is pending for the past two years, this Court is of the view that it would be proper to give one more opportunity to the petitioner to file an appeal. Hence, the petitioner is permitted to file an appeal against the order of the assessing officer and on such filing, the appellate authority is directed to consider all the objections raised in the memo of grounds in this writ petition and pass orders in accordance with law. Ten days time is granted from today to the petitioner to file the appeal.

W.P. No. 29538 of 2004:

7. The writ petition is filed seeking for the relief of issuance of a writ of mandamus to direct the respondent and his subordinates to forbear from charging the members of the petitioner-association to tax for their transactions pertaining to the cost of consumables like dyes and chemicals used by them in the execution of dyeing, bleaching and printing contract.

8. It is the case of the petitioner that the members of the petitioner-association are registered dealers under the provisions of the TNGST Act. The members are engaged in the business of dyeing, bleaching and printing of fabrics on job-work basis. In the course of executing the job-work, the members of the petitioner-association purchased consumables like dyes and chemicals, both locally and inter-State to be used in the process of dyeing, etc. According to the petitioner, it is only consumables and they are used in the execution of the job-work of dyeing and therefore, the cost of such consumables has to be excluded from the total turnover of a dealer in calculating the taxable turnover for the purpose of levy of tax u/s 3B(1) of the Act. The cause of action for filing this writ petition is as follows:

3. While so, the officers under the control of the respondent have invariably issued notices to some of the members calling upon them to disclose the turnover on the deemed sale value of dyes and chemicals involved in the dyeing, bleaching and printing contract and to pay tax on the turnover relating to deemed first sales of dyes and chemicals and resale tax on the deemed second sales of dyes and chemicals by filing returns from April 2003.

4. The other members of the association also apprehend that such notices should be issued to them soon and hence they approached the association to represent on their behalf and move the court of law on the ground that such notices by the officers is an attempt to disregard the well-settled legal position in respect of dyeing contracts. The attempt made by the officers under the control of the respondent to include the cost of these consumables in the taxable turnover is illegal and violative of the law declared by this honourable court in State of Tamil Nadu v. Vijayakumar Mills Limited reported in [1996] 100 STC 213.

9. From the above, it is clear that the petitioner has not made out any particular incident or cause of action. The writ petition has been filed only on apprehension. The wild statement is made in paragraph No. 3 that officers under the control of the respondent have invariably issued notices to some of the members of the

petitioner-association calling upon them to disclose the turnover on the deemed sale value of dyes and chemicals involved in the dyeing, bleaching and printing contract and to pay tax on the turnover relating to deemed first sales of dyes and chemicals and resale tax on the deemed second sales of dyes and chemicals by filing Al returns. From the above, I am of the view that the wild averment cannot by itself form a cause of action. As and when any particular notice has been issued to any one of the members of the petitioner-association, it is well open to them to agitate the same in the manner known to law. Hence, the writ petition is dismissed.

W.P. Nos. 24740 and 27239 of 2004:

10. The writ petition in W.P. No. 24740 of 2004 is filed seeking for the relief of issuance of a writ of mandamus to direct the respondent and his subordinates to grant the exemption to the members of the petitioner-association for their transactions pertaining to the cost of consumables like dyes and chemicals used by them in the execution of printing contract, where there is no transfer of property involved.

11. The writ petition in W.P. No. 27239 of 2004 is filed seeking for the relief of issuance of a writ of mandamus to direct the second respondent to grant exemption for the transactions pertaining to the cost of consumables like dyes and chemicals used by the petitioner in the execution of dyeing, bleaching and printing contract where there is no transfer of property.

12. The relief sought in these writ petitions cannot be granted, since granting of exemption is done only in accordance with the statutory provisions by the statutory authorities and not by this court. The writ petitions are dismissed.

W.P. No. 22360 of 2004:

13. The writ petition is filed seeking for the relief of issuance of writ of certiorari to call for the records on the file of the second respondent herein in No. Nil/2004-2005 dated July 15, 2004 and quash the same.

The impugned order in this writ petition is set aside by reserving liberty to the second respondent to furnish necessary details/D3 proposals to the jurisdictional assessing officer. If the jurisdictional assessing officer is satisfied with the details/ D3 proposals by the second respondent, it is open to him to proceed further or deviate by D7 procedure.

14. Accordingly, all the writ petitions are disposed of. No costs. Consequently, the connected W.P.M.Ps. are closed.

