(2015) 03 MAD CK 0523

In the Madras High Court

Case No : Writ Petition Nos. 8912, 8913 of 2015, M.P. Nos. 1 and 1 of 2015

Tech Megacorp International Private Limited — APPELLANT

Vs

The Assistant Commissioner and Others — RESPONDENT

Date of Decision : 27-03-2015

Acts Referred:
Tamil Nadu Value Added Tax Act, 2006 — Section 19(16), 19(17), 22, 24, 26

Citation : (2015) 03 MAD CK 0523

Hon'ble Judges : S. Vaidyanathan, J

Bench : Single Bench

Advocate : P. Rajkumar, for the Appellant; A.N.R. Jayapratap, Additional Government Pleader (Taxes), Advocates for the Respondent

Judgement

S. Vaidyanathan, J.

1. Heard Mr.P.Rajkumar, learned counsel for petitioner and Mr.A.N.R. Jayapratap, learned Additional Government Pleader (Taxes). With the consent of both the parties, these writ petitions are taken up for final disposal at the admission stage itself.

2. The petitioner has filed these writ petitions seeking to quash the orders of the first respondent in TIN:33911423454/2011-12 and TIN:33911423454/2012-13 dated 19.11.2014 and 25.11.2014 respectively and a direction to the first respondent to pass a fresh assessment order after considering the industrial input certificates issued by the petitioner''s customers under Rule 6(3)(b) of the Tamil Nadu Value Added Tax Rules, 2007 and also the documents relating to sales return.

3. According to the petitioner, the second respondent proposed to levy a higher tax at 12.5% and 14.5% by notices dated 26.07.2013 and 12.09.2013 on the sales turn over of steel structurals treating it as sales turnover of electrical goods and accessories. The petitioner has submitted objections on 30.09.2013 clearly objecting to the proposal stating that they are not dealers in electrical goods and

accessories, but manufacturers of steel structurals and not dealing with electrical items. There were revised notices and for that also detailed objections were given. The authority having considered the objections, passed the impugned orders. Against that the petitioner has preferred appeals before the appellate authority and the appellate authority has returned the same on the ground that the petitioner has not deposited 25% of the amount determined by the assessing authority as the same is a condition precedent for preferring an appeal.

4. The petitioner contended that when there is excess input tax credit lying with the department, the same will have to be adjusted towards pre- deposit and this request was not acceded by the department. The petitioner further submitted that the impugned orders are also dealt with the sale of goods as industrial inputs which was not there in the original notice.

5. The petitioner''s request dated 05.02.2015 to adjust the excess amount lying with the department was turned down on 23.02.2015 stating that this Court has considered the second proviso to Section 52 and Section 19(16) of the Tamil Nadu Value Added Tax Act, 2006 and made it clear that no person shall be entitled to have an appeal numbered without meeting the statutory requirement of depositing 25% of the disputed tax amount as the provisions of the Tamil Nadu Value Added Tax Act, 2006 categorically provides that the input tax credit availed by any registered dealer is only provisional and the assessing authority is empowered to revoke the same if it appears to him to be incorrect and otherwise not in order.

6. The petitioner stated that when more than Rs. 76 lakhs is lying with the department, which has got to be paid to the petitioner, directing them to pay 25% of the disputed amount is incorrect.

7. Per contra, learned Additional Government Pleader (Taxes) submits that the petitioner has preferred appeals against the original order of the assessing authority and when the provision is very clear that 25% of the amount will have to be paid, the authority was right in rejecting the request of the petitioner and return the appeal papers to the petitioner.

8. For the sake of convenience, Sections 19(16), 19(17) and 52 of the Tamil Nadu Value Added Tax Act, 2006 are extracted below:

"Sec.19(16) The input tax credit availed by any registered dealer shall be only provisional and the assessing authority is empowered to revoke the same if it appears to the assessing authority to be incorrect, incomplete or otherwise not in order.

Sec.19(17) If the input tax credit determined by the assessing authority for a year exceeds tax liability for that year, the excess may be adjusted against any outstanding tax due from the dealer.

Section 52. Appeal to Appellate Joint Commissioner.- (1) any person objecting to an order passed by the Deputy Commissioner (Assessment) under section 22, section 24, section 26, sub-sections (1), (2), (3) and (4) of section 27, section 28, section 29, section 34 or sub-section (2) of section 40 may, within a period of thirty days from the date on which the order was served on him in the manner prescribed, appeal to the Appellate Joint Commissioner having jurisdiction:

Provided that the Appellate Joint Commissioner may within a further period of thirty days admit an appeal presented after the expiration of the first mentioned period of thirty days if he is satisfied that the appellant had sufficient cause for not presenting the appeal within the first mentioned period:

Provided further that in the case of an order under section 22, section 24, section 26 or sub-sections (1), (2), (3) and (4) of section 27, section 28 or section 29, no appeal shall be entertained under this sub-section unless it is accompanied by satisfactory proof of the payment of the tax admitted by the appellant to be due or of such instalments thereof as might have become payable, as the case may be, and twenty-five per cent of the difference of the tax assessed by the assessing authority and the tax admitted by the appellant.

Sec.52(2) The appeal shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by such fee not exceeding one hundred rupees, as may be prescribed.

Sec.52(3) In disposing of an appeal, the Appellate Joint Commissioner may, after giving the appellant a reasonable opportunity of being heard, and for the sufficient reasons to be recorded in writing -

(a) in the case of an order of assessment -

(i) confirm, reduce, enhance or annul the assessment or the penalty or both;

(ii) set aside the assessment and direct the Deputy Commissioner (Assessment) to make a fresh assessment after such further inquiry as may be directed; or

(iii) pass such other orders as he may think fit; or

(b) in the case of any other order, confirm, cancel or vary such order:

Provided that at the hearing of any appeal, the Deputy Commissioner (Assessment) shall have the right to be heard either in person or by a representative.

Sec.52(4) Notwithstanding that an appeal has been preferred under sub-section (1), the tax shall be paid in accordance with the order of assessment against which the appeal has been preferred:

Provided that the Appellate Joint Commissioner may, in his discretion, give such directions as he thinks fit, in regard to the payment of the tax before the disposal of the appeal, if the appellant furnishes sufficient security to his satisfaction, in such manner, as may be prescribed:

Provided further that the directions given under the first proviso shall stand vacated, if no order is passed under sub- section (3) within a period of one hundred and eighty days of the issue of order under the said proviso."

9. No doubt, 25% of the disputed tax amount has to be deposited by an assessee while preferring an appeal as the same is a condition precedent in terms of the provisions of the Tamil Nadu Value Added Tax Act, 2006. Such condition precedent will be applicable only if no amount of an assessee in excess is lying with the department. If any amount is lying with the department, which is admittedly due to the assessee, the same can be adjusted. The mandatory condition imposed under the provisions of the Act will be applicable where there is no amount of an assessee lying with the department. In this case, admittedly more than Rs. 75 lakhs is lying with the department. Hence, the said amount shall be taken into account while entertaining an appeal by an appellate authority. Even though there is no such provision under the Tamil Nadu Value Added Tax Act, 2006, with regard to consideration of this aspect, since the benefit should go to the assessee and that the assessee''s money is lying with the department, such an interpretation will have to be given when reading the provisions of Section 19(17) of the Tamil Nadu Value Added Tax Act, 2006, which is extracted supra.

10. Even though the petitioner has contended that the authority has not taken into account the objections raised by the petitioner, more particularly, he has tendered a tangent finding which is not reflected in the original notice, since appeals have been filed, the entire issue has got to be agitated before the appellate authority which shall be considered on merits and in accordance with law. The assessing authority is the person concerned to adjust 25% of disputed amount from the amount lying with the department and issue a certificate to the petitioner. The said exercise shall be completed within fifteen days from the date of receipt of a copy of this order. On receipt of such certificate from the authority concerned, the petitioner shall represent the appeals within fifteen days thereafter. This Court makes it very clear that the powers of the appellate authority to pass any interim order with regard to remaining 75% has not been dealt with in these writ petitions. It is open to the authority to consider the same if any stay petition is filed by the person like the petitioner herein.

11. These Writ Petitions are disposed of with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

Registry is directed to return the original orders as copies of the same have been filed in the typed set of papers.

