

(2013) 11 MAD CK 0017

In the Madras High Court

Case No : W.A. No. 2044 of 2013 and M.P. No. 1 of 2013

The Assistant Commissioner (CT) and The Joint
Commissioner (CT)

APPELLANT

Vs

M/s. Pamban Oil Mills (P) Ltd.

RESPONDENT

Date of Decision : 18-11-2013

Acts Referred:

Citation : (2013) 6 CTC 839 : (2013) 66 VST 157 : (2013) WritLR 1180

Hon'ble Judges : R. Mahadevan, J;N. Paul Vasanthakumar, J

Bench : Division Bench

Advocate : A.R. Jayaprathap, Additional Government Pleader, for the Appellant;
N. Murali, for the Respondent

Judgement

R. Mahadevan, J.—This Writ Appeal has been preferred against the order of the learned single Judge in W.P. No. 23861 of 2010 dated

25.01.2011. The respondent herein challenged the order of the first appellant dated 23.10.2010 rejecting his demand for issuance of refund

voucher and also sought for interest u/s 24(4) of the Tamil Nadu General Sales Tax Act. His writ petition was partly allowed by the learned single

Judge on 25.01.2011 setting aside the order dated 23.10.2010 of the first appellant and directed him to issue refund voucher in terms of his order

dated 03.10.2008, within four weeks from the date of receipt of order and the same is challenged herein. Proceeding to the facts, the assessment

year is 1996-97 and the best judgment assessment order was passed on 30.11.1998 which was subsequently, revised on 28.03.2002. The

respondent filed an appeal in A.P. 207/07, and with the sole objective of giving an opportunity to the respondent, the Appellate Assistant

Commissioner set aside the assessment order and remanded back the matter to

the Assessing Authority, the first appellant. As directed, after verification of the accounts, the first appellant passed orders of assessment on 03.10.2008 whereby the turnover was revised and it was declared that the respondent had in fact made excess payment of tax of Rs. 9,75,447/- and found eligible for refund. Form "C" confirming the entitlement to refund was also issued on 03.10.2008 itself. The only formality that remained was the issuance of refund voucher and the respondent sent representations for the same.

2. Earlier a notice dated 27.6.2007 was issued by the 1st appellant to the respondent demanding penal interest u/s 24(3) of the Act for belated payment of amount due under the deferral scheme and the same was still pending. Before further action could be taken, the Tamil Nadu

Government had promulgated Tamil Nadu Ordinance No. 7 of 2008 and floated the Samadhan Scheme. The Rules commemorating the ordinance

was published in the Gazette on 31.10.2008. The respondent approached the second appellant u/s 5 of the Scheme for settlement of interest for

the Assessment Year 1996-97 on 30.10.2009. Parallely, since the representations seeking refund did not yield any results, the respondent

approached this Court in W.P. No. 18508 of 2010 and the same was disposed of, with a direction to consider the representation dated

21.12.2009 and pass orders, within four weeks from the date of receipt of copy of the order. By an order dated 23.09.2010, the claim of refund

was rejected on the grounds that any order passed by the Assessing Authority subsequent to the application for settlement under Samadhan

Scheme could not be reopened and the claim was not admissible under Sections 9 and 10 of the Tamil Nadu Sales Tax (Settlement of Arrears)

Act, 2008. Aggrieved by the same, the writ petition was filed by the respondent alleging inter alia that the payment of interest under the Samadhan

Scheme will not affect the refund claim, which was already decided by the first appellant and therefore the same will not come within the purview

of Samadhan Scheme. Even though, no claim of interest for belated refund was made earlier, the respondent also claimed interest. The Writ

Petition was partly allowed with regard to refund. However, the respondents claim of interest was not allowed but liberty was given to work out

his remedy. The respondent has not preferred any appeal against the portion of

the order wherein his claim of interest was negated.

3. The Additional Government Pleader appearing for the appellants submitted that there is a specific bar u/s 9 and all claims are deemed to be

withdrawn u/s 10 of the Settlement of Arrears Act. Further, once having opted for settlement under the Samadhan Scheme, the respondent is not

entitled to claim refund and therefore sought for setting aside the orders of the learned single Judge. On the other hand, the learned counsel for the

respondent argued that there is no infirmity in the orders of the learned single judge with regard to refund. However, in view of the Section 24(4) of

the Act, agitated that the claim of interest is automatic and hence the learned single Judge could have directly allowed the claim of interest.

4. The appellants being entrusted with the job of collecting revenue for the state ought to be more vigilant. If the first appellant had sent the refund

voucher as claimed to have been sent by him along with the Form "C" dated 03.10.2008, the question of claiming interest would not arise. On the

other hand, had the first appellant intimated the second appellant about the excess payment of tax, the refund amount would have been deducted

from the total interest claim made by the Department and the amount payable under the Samadhan Scheme could have been determined. This

negligence has caused substantive loss to the exchequer. But for the lackadaisical acts of the appellants, present situation would not arise. Even the

second appellant has failed to vigilantly analyse the eligibility and the particulars given in the Samadhan application. Since the eligibility of the

respondent to apply for settlement of interest due is not the issue in this appeal, we are not going deep into it. In any event, the period for revoking

the Settlement Certificate has already lapsed and therefore cannot be reopened.

5. Admittedly, the respondent was entitled for refund of Rs. 9,75,447/- and the issue to be decided is whether after approaching the second

appellant under the Samadhan Scheme, without reference to the referred claim, the right of refund continues or not.

6. Section 9 of the Ordinance or Tamil Nadu Act No. 60 of 2008, which was relied on by the first appellant to reject the refund claim reads as

follows:

A Certificate issued u/s 8, shall be conclusive as to the settlement to which it relates, and no matter covered by such certificate shall be re-opened

in any proceeding of review or revision, or in any other proceeding, under the relevant Act.

Upon reading of Section 9, it is clear that the bar to re-open any proceedings is applicable only in respect of the Certificate issued u/s 8.

7. Section 10 of the same Act reads as follows:

Notwithstanding anything to the contrary contained in any provision in the relevant Act, any proceeding or appeal or revision for any period

pending before the assessing authority or appellate authority or revisional authority, as the case may be, under the relevant Act in respect of which

a certificate is issued u/s 8, shall be deemed to have been withdrawn from the date of making of the application by the applicant under sub-section

(1) of Section 5. Any order passed by the assessing authority or appellate authority or revisional authority subsequent to the date of filing of

application for settlement of arrears of tax, penalty or interest, resulting in claim of refund of amount paid upto the time of settlement of such arrears

of tax, penalty or interest under this Ordinance, will not be taken into consideration.

For Section 10 to be made applicable, the issue pending before the authority must be with respect to the Certificate issued u/s 8 and that the order

of refund must have been made after the application for settlement u/s 5. In the instant case, the Certificate was issued only with respect to the

application made for settlement of interest. The refund was ordered on 03.10.2008 even before the Ordinance was published. Therefore no

reliance can be placed upon Sections 9 and 10 of the Settlement of Arrears Act.

8. Upon examination of the Sections of the Settlement of Arrears Act, it is evident that an application has to be made by the dealer to the

designated authority who in the instant case is the second appellant. The second appellant as per Section 6 shall verify the correctness of the

particulars furnished in the application u/s 5 with reference to relevant records and determine the amount payable at the rates specified in Section 7.

As per Rule 3(4) of Tamil Nadu (Settlement of Arrears) Rules, 2008, the designated authority has to inform the Assessing Authority about the

application within seven days and if there is any defect or omission, he has every right to return the application under sub-rule 5 of Rule 3.

Apparently, no defect or omission was found with respect to the interest claim

and a Certificate was also issued on 06.01.2010. The respondent had approached the second appellant only for settlement of interest in terms of Section 7 of the Settlement of Arrears Act. The scope of the Act is such that, the dealer has been permitted to choose whether to approach the authority or not. The Certificate would cover only the claims relating to any amount quoted in order determining the amount to be paid under the Scheme. The bar emphasised under Sections 9 and 10 shall be applicable only if the dealer wants to claim refund of the amount paid under the Samadhan Scheme and not the refund which was ordered even before the application for Settlement, and in the present case even before the floating of the Scheme. Since, there was no request for interest earlier, the learned single Judge had rightly disallowed the claim of interest granting liberty to the respondent and directed the appellants to issue refund voucher. Hence, there is no infirmity in the order dated 25.01.2011 passed by the learned single Judge and hence the same is affirmed and the Writ Appeal is dismissed. No Costs.