(2009) 08 MAD CK 0238

In the Madras High Court

Case No : Writ Petition No. 2779 of 2008 and M.P. (MD) No. 1 of 2008

Thvya Traders (Dhivya Traders) APPELLANT

Vs

The Appellate Assistant Commissioner (CT) and The Deputy Commercial Tax Officer RESPONDENT

Date of Decision : 28-08-2009

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 10(3), 12, 12A, 14, 15
Tamil Nadu General Sales Tax Rules, 1959 — Rule 52, 52(1)

Citation : (2010) 33 VST 803

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : M.Md. Ibrahim Ali, for the Appellant; Pala. Ramasamy, Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

T.S. Sivagnanam, J.—By consent, the writ petition is taken up for final disposal.

2.The petitioner is a trader in waste cotton and registered under the Tamil Nadu General Sales Tax Act, 1959 and the Rules framed thereunder. The petitioner has filed the above writ petition to quash the order of the first respondent dated 21.01.2008 by which, the statutory appeal filed by the petitioner has been rejected as not maintainable on the ground that the appeal petition has been filed beyond the statutory period.

3. The case of the petitioner is that revised assessment order was passed by the Deputy Commercial Tax Officer, Srivilliputhur, on 28.03.2005 and the same was not served on the Propretrix or any other person related to the Propretrix and therefore, the petitioner would submit that the appeal filed after receipt of the certified copy cannot be rejected as being time barred.

4. The case of the Department before the appellate authority was that revised assessment orders dated 28.03.2005 was served on Tmt. M. Indumathi on

19.04.2005 who was the wife of the petitioner''s brother. Therefore, the defence of the Department is that in terms of Section 31 of the Tamil Nadu General Sales Tax Act, 1959, no appeal could be preferred beyond 60 days and there is no power to condone the delay.

5. Therefore, the only question to be decided is as to whether there has been proper service of the revised assessment order on the petitioner. In this regard, it is to be noted that the contention of the Department is that the order was served on Tmt. Indumathi on 19.04.2005 who is the wife of the petitioner''s brother.

6. On the contrary, the petitioner would submit that they have received a certified copy of the revised assessment order only on 29.06.2007 and they have preferred an appeal on 11.07.2007 and the same is within the period of limitation.

7. In terms of Section 31 of the Tamil Nadu General Sales Tax Act, 1959 any person objecting to an order passed by the appropriate authority u/s 4A, Sub-section (3) of Section 10, Section 12, Section 12A, Section 14, Section 15, Sub-sections (1) and (2) of Section 16, Section 18, Sub-sections (2) of Section 22, Section 23 or Section 27, other than an order passed by an Assistant Commissioner (Assessment) may, within a period of thirty days from the date on which the order was served on him in the manner prescribed, appeal against such order to the Appellate Assistant Commissioner having jurisdiction. (Emphasis supplied)

8. The first proviso to Sub-section (1) gives power to the Appellate Assistant Commissioner to admit an appeal presented after the expiration of the first mentioned period of 30 days if he is satisfied that the appellant had sufficient cause for not presenting appeal within the first mentioned period of 30 days. The second proviso would state that in the case of an order under Sub-section (3) of Section 10, Section 12, Section 12A, Section 14, Section 15 or Sub-sections (1) and (2) of Section 16, no appeal would be entertained under 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.

9. Therefore, the period of limitation has to be calculated from the date on which the order was served on the assessee in the manner prescribed. Rule 52 of the Tamil Nadu General Sales Tax Rules, 1959 deals with service of notice it reads as follows:

Rule 52(1) Service of notices:- The service on a dealer of any notice, summons or order under the Act or these rules may be effected in any of the following ways, namely:

(a) by giving or tendering it to such dealer or his manager or agent or the legal practitioner appointed to represent him or to his authorised representative.

Explanation:- Endorsement by person who delivers the notice, etc., of having tendered or given it will be proof for the purpose of this sub-rule.

(b) if such dealer or his manager or agent or the legal practitioner appointed to represent him, or his authorised representative is not found, by giving or tendering it to any adult member of his family;

(c) if the address of such dealer is known to the assessing authority, by sending it to him by registered post; or

(d) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence.

(2) Where any Hindu undivided family, firm or other association of persons is partitioned, dissolved or discontinued, notice, summons, or orders issued under the Act or these rules may be served on any member of the Hindu undivided family, any person who was a partner (not being a minor) or member of the association, as the case may be, immediately before such partition, dissolution or discontinuance.

10. In terms of the said Rule, the effective service is by giving or tendering it such dealer, or his Manager or agent or the legal practitioner appointed to represent him or his authorised representative. The second contingency being if such a dealer or his manager or the legal practitioner appointed to represent the assessee or his authorised representative is not found, it could be given or tendered to any adult member of his family.

11. Further Clause (c) of the said Rule contemplates that where if the address of such dealer is known to the assessing authority, by sending it to him by registered post, if none of the above modes are practicable, it shall be affixed in the conspicuous place at his last known place of business or his residence. Therefore, it is to be noted that the power of affixture contemplated under Clause (d) cannot be resorted to without exhausting the modes of service prescribed in Clauses (a) to (c) of Rule 52(1). Therefore, the learned Counsel for the petitioner, by relying upon the Clause (b) of Rule 52(1) would submit that service of the order on Tmt. M.Indumathi cannot be construed as service on person belonging to the family and therefore, it is not proper compliance of Rule 52(1). (Emphasis supplied)

12. Per contra, the learned Special Government Pleader for the respondents invited the attention of this Court to the counter affidavit filed by the second respondent in which it has been reiterated that the order was served on Tmt. M.Indumathi who is residing in the place of business cum residence of the petitioner and therefore, the petitioner cannot deny the same.

13. Heard Mr. M.Md. Ibrahim Ali, learned Counsel for the petitioner and Mr. Pala. Ramasamy, learned Special Government Pleader for the respondents and

perused the materials available on record.

14. Rules of procedure having been enacted in order to ensure and to give effective implementation of the provisions and the statutes. In taxation statutes the benefit of an interpretation shall always be in favour of the assessee, unless it is shown that a fraud has been played. Therefore, while interpreting the term, any adult member of his family, I am of the clear view that service on brother''s wife cannot be construed as service of adult member of the family especially when the petitioner is a Hindu and given marriage to one P. Karuppasamy.

15. Therefore, I hold that the order has not been served in the manner contemplated under Rule 52(1) of the Tamil Nadu General Sales Tax Rules. It is to be further noted that the Department has not stated as to whether the order was given or tendered to dealer or his manager or agent or the legal practitioner as required under Rule 52(1)(a) before resorting to the procedure under Rule 52(1)(b) of the Rules. Only after such procedure is exhausted and it is found that the persons mentioned in Clause (a) of the said Rule are not available, it may be tendered on the adult member of the family of the petitioner.

16. For the above reasons, I hold that the order has not been served in the manner required under the Tamil Nadu General Sales Tax Act and Rules framed thereunder. In that view of the matter, the impugned order dated 21.01.2008 is set aside and the date of receipt of the order shall be taken as 29.06.2007 and the Appellate Assistant Commissioner is directed to take the appeal filed by the petitioner on 11.07.2007 on its file and decide the same on merits and in accordance with law within a period of eights weeks from the date of receipt of a copy of this order. Learned Counsel for the petitioner would also submit that the petitioner would co-operate with the appeal proceedings.

17. Accordingly, the Writ petition is allowed. No costs. Consequently, M.P. No. 1 of 2008 is closed.