(2011) 07 MAD CK 0470

In the Madras High Court

Case No : Writ Petition No''s. 13995, 13996, 13997, 13998, 14438 and 26677 of 2008 and 5299 of 2009

Vasanthi Agencies APPELLANT

Vs

Commercial Tax Officer II and Another RESPONDENT

Date of Decision : 15-07-2011

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 31

Citation : (2013) 60 VST 254

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : V.R. Shanmuganathan and S. Raveekumar, for the Appellant; T.P. Manoharan, Special Government Pleader (Pondy), for the Respondent

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—Since, the issues involved in all the writ petitions are similar in nature, these writ petitions are taken up together and a common order is being passed. The above writ petitions had been filed praying for writs of declaration declaring the second proviso to sub-section (1) of section 34 of the Pondicherry General Sales Tax Act, 1967, as amended by the Amendment Act 4 of 2000, insofar as it demands 25 per cent of the difference of the tax assessed by the assessing authority and the tax admitted by the appellants, as a condition precedent for preferring an appeal under the said provisions, as arbitrary and invalid.

2. The main contention of the learned counsels appearing for the petitioners is that the amendment in question, introduced in the second proviso to sub-section (1) of section 34 of the Pondicherry General Sales Tax Act, 1967, takes away the discretion vested with the appellate authority concerned to issue appropriate directions, as he thinks fit, with regard to the payment of tax by the appellants, before the disposal of the appeals.

3. Per contra, the learned Special Government Pleader appearing on behalf of the respondents had submitted that a number of orders had been passed by this court, in similar matters, dismissing the writ petitions by holding that the amendment in question is valid; One of such orders had been passed by this court, on April 30, 2009, in W.P. Nos. 26676, 43880, 43881 and 3185 of 2009, (Vasanthi Agencies, Through its Authorised Signatory, Palaniappan v. Commercial Tax Officer 17, Commercial Tax Department, Puducherry), based on the decision, reported in Taherali Industries and Project (P) Ltd. Vs. Commercial Tax Officer-II, and in Royal Insulation (P) Ltd. Vs. The Commercial Tax Officer,

4. The learned counsel had further submitted that there are no contradictions between the existing provisions, in section 34 of the Pondicherry General Sales Tax Act, 1967, and the newly introduced amendment, by the Amendment Act 4 of 2000. The discretion vested with the appellate authority, with regard to the payment of tax by the appellants had not been diluted or taken away, as alleged by the petitioners. The amendment introduced by way of the Amendment Act 4 of 2000 is to be read along with the existing provisions of section 34 of the Pondicherry General Sales Tax Act 1967.

5. He had further submitted that a number of orders had been passed by the various Division Benches of this court holding that the amendment introduced in section 34 of the Pondicherry General Sales Tax Act, 1959, is valid.

6. The learned counsels appearing on behalf of the petitioners had submitted that the observations made by the Supreme Court in its decision, in Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., , with regard to the validity of the special provisions of law, as a speedier legal method to recover the dues of the banks and other financial institutions, would not be applicable to the present case.

7. The learned Special Government Pleader appearing on behalf of the respondents had relied on the decision of this court, in K.M. Corporation Vs. The State of Tamil Nadu, wherein, the amendment introduced to section 31 of the Tamil Nadu General Sales Tax Act, 1959, by the Tamil Nadu Act 14 of the 1999, which is similar to the amendment introduced to section 34 of the Pondicherry General Sales Tax Act 1967, had been held to be valid.

8. In view of the submissions made by the learned counsels appearing on behalf of the parties concerned and in view of the decisions cited supra, this court is of the considered view that the amendment introduced in section 34 of the Pondicherry General Sales Tax Act, 1967, by the amendment Act 4 of 2000, cannot be held to be invalid.

9. It cannot be said that the amendment in question contravenes the existing provisions of law, by taking away the discretion vested with the appellate authority, u/s 34 of the Pondicherry General Sales Tax Act, 1967, with regard to the payment of tax by the appellants concerned.

10. The petitioners have not been in a position to show that the amendment introduced, in section 34 of the Pondicherry General Sales Tax Act, 1967, is ultra vires and unconstitutional. Further, a number of orders had already been passed by this court holding that the amendment in question is valid in the eye of law. In such circumstances, this court finds it appropriate to dismiss the writ petitions, as they are devoid of merits. Hence, the writ petitions are dismissed. No costs. Connected M.P. Nos. 1, 1, 1, 1, 1 of 2008 and M.P. No. 1 of 2009 are closed.