(2015) 04 MAD CK 0154

In the Madras High Court

Case No : Writ Petition No. 9867 of 2015 and M.P. Nos. 1 and 2 of 2015

V.K.N. Hardwares APPELLANT

Vs

State of Tamil Nadu and Others RESPONDENT

Date of Decision : 06-04-2015

Acts Referred:
Tamil Nadu Value Added Tax Act, 2006 — Section 3(2), 3(4), 3(4)(a), 51, 52

Citation : (2015) 04 MAD CK 0154

Hon'ble Judges : M. Sathyanarayanan, J

Bench : Single Bench

Advocate : G. Devi for V. Raghupathi, for the Appellant; S. Kanmani Annamalai, Additional Government Pleader, Advocates for the Respondent

Judgement

M. Sathyanarayanan, J.

1. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner-firm claims that it is doing retailing business in hardwares and paints and the entire purchases and sales are done within the State and they have also paid Value Added Tax (in short, VAT) of 0.5% without availing Input Tax Credit (ITC) and local purchases and without collecting output tax under Section 3(4)(a) of the Tamil Nadu Value Added Tax Act, 2006 (in short, TNVAT Act), as amended. It is the claim of the petitioner that the third respondent has wrongly levied VAT under Section 3(2) of the Act on the entire turn-over submitted by the petitioner, on the presumption that the turn-over under Section 3(4) of the Act for the year 2009-2010 exceeded Rs. 20 lakhs and hence, the sales turn-over upto Rs. 50 lakhs has also to be assessed under Section 3(2) of the Act and not under Section 3(4) of the Act and also failed to take into consideration the amendment made to Section 3(4) under the Amended Act 49/2008. The petitioner aggrieved by the said assessment order, filed a statutory appeal under Sections 51 and 52 of the TNVAT Act read with Rule 14(1) of the TNVAT Rule to the second respondent on 15.9.2014, and also moved an application for stay. The second respondent has granted stay vide order dated

29.9.2014, imposing the following conditions:--

"9. i) There shall be a stay for a period of six months or till the disposal of case whichever is earlier from the date of issue of this order subject to:

ii) The petitioners shall pay of Rs. 1,44,100/- being another 25% of the disputed tax and file a Bank Guarantee/Security by way of Immovable Property for the balance of tax of Rs. 2,87,924/- on or before 29.10.2014.

iii) The Bank Guarantee/Security by way of Immovable Property shall be for a period of six months that is upto 28.03.2015 and the duplicate copy of Bank Guarantee/Security by way of Immovable Property attested by the Commercial Tax Officer, Thiruvarur Circle shall be filed in this office for awareness and file purpose.

10. In the event of the petitioners not complying with these directions this order shall cease its force on its own accord without further notice or order."

3. The petitioner, in paragraph No. 10 of the affidavit filed in support of this petition, would submit that it has complied with the said conditional stay order and since the interim order is restricted to a limited period, the third respondent has served Arrears Notice dated 30.3.2015, making the impugned demand, and challenging the vires of the same, the present writ petition is filed.

4. The learned Counsel appearing for the petitioner, would submit that admittedly, the statutory appeal is pending and pendency of the statutory appeal, the conditional order of interim stay was also passed and the petitioner has complied with the same and in the light of the fact that the conditional order has been restricted to a particular period, the third respondent took advantage of the same and issued the impugned Arrears Notice and the same, on the face of it, is unsustainable and prays for quashment of the impugned notice.

5. Per contra, Mr. S. Annamalai, learned Additional Government Pleader (Taxes), would submit that since the interim order has been restricted to a particular period, the impugned notice issued by the third respondent, is in order and prays for dismissal of the writ petition.

6. This Court, after careful consideration of the rival submissions and upon perusal of the typed-set of documents, is of the view that the impugned order is liable to be quashed for the following reasons.

7. Admittedly, the statutory appeal is pending and pendency of the statutory appeal, the petitioner filed an application for stay and the second respondent vide order dated 29.9.2014, has passed the conditional order of stay. As per the averments made in paragraph No. 10 of the affidavit filed in support of the writ petition, the said conditional order has been complied with. Once the order has been complied with, the interim order shall enure till the disposal of the statutory appeal and the third respondent has failed to advert to the said issue and issued the impugned notice, which, in the considered opinion of the Court, is

unsustainable.

8. In the result, the writ petition is allowed and the impugned order dated 30.3.2015, passed by the third respondent, is set aside and the order of interim stay granted by the second respondent on 29.9.2014, shall continue till the disposal of the statutory appeal and the second respondent shall make all endeavour to dispose of the said appeal in accordance with law as expeditiously as possible and not later than eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

