IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2015

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.19509 of 2015
and
M.P.No.1 of 2015

K.Dhanasekar .. Petitioner

vs.

The Assistant Commissioner (CT),
Chrompet Assessment Circle, No.117,
Station Road, Radha Nagar,
Chennai - 600 044.
.. Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records in respect of the Revised Assessment Order CST/722259/2010-11 dated 20.4.2015 of the respondent under the Central Sales Tax Act, 1956 and quash the same.

For petitioner : Mr.K.Adithya Reddy

For respondent : Mr.V.Haribabu,
Additional Government Pleader (T)

ORDER

Mr. V.Haribabu, learned Additional Government Pleader (Taxes), takes notice for the respondent.

2. With the consent of both the parties, this Writ Petition is taken up for disposal at the admission stage itself.

3. This Writ Petition is filed against the impugned assessment order dated 20.4.2015 passed by the Assistant Commissioner (CT), Chromepet Assessment Circle, Chennai, for the Assessment Year 2010-11. By this impugned order, the petitioner was directed to pay the difference of tax at the rate of 8.5% as the interstate sales of machinery to unregistered dealers was taxable at 12.5% and the petitioner had paid only at the rate of 4% tax.

4. According to the petitioner, sale of machinery to other State under caption “capital goods” being industrial input was liable to

tax at 4% only, they paid correct rate of tax i.e. 4% and petitioner was not liable to pay the additional tax at 8.5% as claimed by the respondent and that no interest was leviable as there was no demand when the petitioner reported a total and taxable turnover of Rs.31,73,100/- in the annual return filed for 2010-11 under CST Act, 1956. It is further contended by the petitioner that for the first time, by way of the impugned order only, the demand for additional tax of Rs.2,69,718/- was made and also interest.

5. Learned counsel appearing for the petitioner would mainly contend that, for the first time, the statutory demand for additional tax of Rs.2,69,718/- came to be made only in the impugned assessment order passed on 20.4.2015. Therefore, the question of delay in making the payment of such tax would not arise as alleged by the respondent and consequently, the levy of interest for the alleged delay in payment of such tax also would not arise. Assailing the approach adopted by the respondent in assessing the tax liability, the learned counsel further submitted that the interest demanded on such tax will have to be calculated from the date of issuance of the impugned order and not from the date of effect of interstate sales of machinery and the reason given by the respondent that the liability arises on the date of sale itself is unwarranted and unfounded. In support of his contention, the learned counsel relied on the decision of the Apex Court in the case of E.I.D. Parry (India) Ltd., Vs. Assistant Commissioner of Commercial Taxes, Chennai reported in (2005) 141 STC 12 (SC) in which it has been held that in the absence of any assessment even provisional and a notice of demand, no interest would be payable under Section 24(3) of the TNGST Act 1959.

6. Learned Additional Government Pleader would admit that the petitioner has filed annual return for 2010-11 within the time. He would also admit that no provisional assessment was made by the Assessing Officer before passing the final assessment order. He further submitted that if the petitioner was aggrieved over the assessment order, he should have approached the appellate authority instead of approaching this Court.

7. Heard the learned counsel appearing for the parties and perused the records.

8. It is not in dispute that the petitioner had reported a total and taxable turnover of Rs.31,73,100/- for the assessment year 2010-11. It appears that the petitioner had effected interstate sales of machinery to unregistered dealers and paid tax @ 4%. As per the provision of section 9(2) of the CST Act, 1956 r/w section 42(3) of the Tamil Nadu Value Added Tax Act, 2006, the petitioner was deemed to have been assessed on 30th June, 2012 by the respondent on the date of accepting the above return filed by the petitioner under CST Act for the Assessment Year 2010-11. Subsequently, the respondent issued a notice dated 23.2.2015 proposing to assess turn over tax at the rate of 12.5% instead of 4% for the reason that the goods sold

were not capital goods and therefore, liable to pay tax at the rate of 12.5%. The petitioner filed a reply dated 27.3.2015 stating that machinery sold to other units was to be used as capital goods and therefore, the payment of tax at the rate of 4% tax on the sale of machinery was in order. It is also the claim of the petitioner that there was no interest due and payable in the absence of any statutory demand made by the respondent prior to the passing of assessment order.

9. On consideration of the facts and circumstances of the case, this Court is of the view that the ratio laid down in E.I.D. Parry (India) Ltd., Vs. Assistant Commissioner of Commercial Taxes referred to above is applicable to the case of the petitioner. It is an admitted position that tax as per the annual return had been paid within the time. It is also an admitted position that there was no provisional assessment or notice has been issued prior to the final assessment made by the respondent. Therefore, in the absence of any such provisional assessment or notice, at this juncture, the stand taken by the respondent in the impugned order that the petitioner has to pay the difference in tax i.e. 8.5% and interest from the date of sale i.e. for delay of 1551 days is unfounded. Therefore, the impugned Assessment Order is liable to be set aside.

10. In the result, the Writ Petition is allowed and the impugned assessment order dated 20.4.2015 is set aside. No costs. The connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar(CSV)

/true copy/

Sub Asst. Registrar

asvm
To
The Assistant Commissioner (CT),
Chrompet Assessment Circle, No.117,
Station Road, Radha Nagar,
Chennai - 600 044.
+1 cc to Mr.S.P.Asokan, Advocate sr.33288/15

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aa01/09/2015