IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 12/12/2017
C O R A M
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE R.PONGIAPPAN

Tax Case No.55 of 2017

The State of Tamil Nadu
rep. by the Joint Commissioner (CT)
Chennai (North) Division
Chennai 6. ... Petitioner

Vs

Tvl.J.Hanumaiah Chetty and Co
12 Rasappa Chetty Street
Chennai 600 003. ... Respondent

Tax Case Revision Petition filed under Section 38 of the TNGST Act, 1959, to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai, dated 20th August 2011 passed inj S.T.A.No.45 of 2005 against the order of the Appellate Assistant Commissioner (CT)-1 Chennai dt.30.9.2004 in A.No.85/04 and against the Commercial Tax Officer Evening Bazaar , Assessment circle Chennai dt.20.2.2004 in TNGST -0340066/2000-2001

For petitioner ... Mr.K.Venkatesh
Special Government Pleader (Taxes)

For respondent ... No appearance.

O R D E R

(Order of the Court was made by S.MANIKUMAR, J)

Instant Tax Case Revision Petition is directed against the order made in S.T.A.No.45 of 2005, dated 20/8/2011, on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai.

2. Short facts leading to the appeal are that the respondent, dealer in hardware chemicals was assessed, under the scheme of self assessment, at 4% on a turnover of Rs.16,46,510/-, under works contract, for the year 2000 - 2001. Subsequently, responding to the notice issued, by the Department, the respondent has furnished the details of works contract executed for Rs.16,46,510/-. After verifying the connected documents relating to composite works contract, the

Assessing Authority, assessed 70% of the turnover of the works contract receipt and allowed the dealer, to deduct 30% of turnover, from the works contract receipt, for labour and other charges, under Section 3 B of the Act, with an observation that the dealer has not exercised their option, to pay compounded rate of tax, at 4%, at any time, not even, before the commencement of the financial year or along with the monthly return, on the commencement of each works contract and therefore, not eligible to avail the compounded rate of tax, under Section 7 C of the Act.

3. Aggrieved against the revision of assessment, the dealer has filed an appeal, before the Appellate Assistant Commissioner (CT). Relying on the judgment reported in 41 STC 264 (State of Tamil Nadu Vs. Ball Bearing Centre), and considering the contention of the dealer that they had not executed any works contract in the previous assessment year 1999 - 2000 and hence there was no question of exercising option along with the first monthly return for the year 2000 - 01, the Appellate authority, allowed the appeal.

4. Aggrieved against the order of the Appellate Assistant Commissioner (CT), State has filed an appeal before the Tamil Nadu Sales Tax Appellate Tribunal, and the same was dismissed.

5. Aggrieved against the order of the Tribunal, State has filed the instant Tax Case Revision Petition, on the following substantial questions of law:-

> (i). Whether in the facts and circumstances of the case, the Appellate Tribunal, is correct in holding that any dealer who executed works contract may apply to the Assessing Authority along with first monthly return for the financial year, his option to pay tax shall be exercised under Section 7 C is with effective from 1/7/2002 and not on or before 31st January 2000?
>
> (ii). Whether in the facts and circumstances of the case, the Tribunal is right in holding that compounding rate of tax for works contract under Section 7 (2) is from 1/7/2000 only and not applicable to be assessment year 2000 - 2001.

6. In support of the above substantial questions of law, Mr.K.Venkatesh, Government Advocate submitted that

(i). The assessee has failed to exercise the option to pay tax, under compounded rate of tax, within the time prescribed under 7 C of the TNGST Act.

(ii). The assessee has failed to file monthly returns by exercising option, under Section 7 C of the Act, before commencement of the financial year.

(iii). Proviso to Section 7 C of the Act, is effective from 31st January 2000. In the instant case, assessment relates to 2000 - 2001 and therefore, the dealer/assessee has to exercise his option, to pay compounded rate of tax, and filed the return, as envisaged, under Section 7 C of the Act, for levying compounding rate of tax.

(iv). The Tribunal erred in holding that exercising option by applying to the Assessing Authority along with first monthly return, on the commencement of each works contract, provided under Section 7 C (2A) is effective, only from 1/7/2002 and that the same is not applicable, for the assessment year 2000 - 2001.

(v). The Tribunal, erred in holding that the option for paying the compounding rate of tax, under Section 7 C, not opted before commencement of the assessment year in filing the first monthly return, for levy of tax under Section 3 B of the Act is inevitable.

(vi). The Tribunal, erred in holding that the decision in 41 STC 264 STATE OF TAMIL NADU Vs. BALL BEARING CENTRE, is squarely covered in the instant case.

7. Heard the learned counsel for the appellant and perused the materials available on record.

8. Tamil Nadu General Sales Tax Assessment for the year 2000 - 2001 has been revised and that the Assessing officer, Commercial Tax Officer, Evening Bazaar, Assessment Circle, has passed an order, on 16/3/2004, directing the respondent, to pay the balance tax of Rs.60,921/-.

9. Aggrieved by the same, the assessee/respondent has filed an appeal No.85 of 2004, before the Appellate Assistant Commissioner (CT) Chennai.

10. After considering the rival submissions and statutory provisions, the Appellate Assistant Commissioner, in A.P.No.85 of 2004, dated 30/9/2014, ordered as hereunder:-

> "The contention of the appellant is that the appellants have not executed any works contract in the previous assessment year (1999-2000) and the one and only works contract executed was in the month of March 2001 (2000 - 01) and hence there was no question of exercising their option along with the first monthly return (i.e April 2000) for the financial year 2000 - 2001. According to sub-Rule 14 (4-CC) which governs the procedure for exercising the option, it was not made applicable to works contract falling under Section 7 C of the Act till sub-rule 15 (4-CC)

was amended by a Notification issued in G.O.Ms.No.76 CT (B1) dated 27/6/2002 and amendment was given effect from 1/7/2002 only and similarly form A 11 which is the form prescribed in the sub-rule for the exercise of option for payment of compounding tax on works contract was made applicable to works contract from 1/7/2002 only by including Section 7 C in the same Government Order in which sub Rule was amended. The other contention of the appellant is that they have included the turnover of works contract and paid the tax along with their monthly return filed for March 2001, as there were no works contract executed in earlier months and also included the works contract turnover in self assessment return filed on 28/9/2001 for assessment at 4% which constitute sufficient compliance of the option mentioned in Section 7 C of the Act in the absence of amendment of relevant rule and Form for exercising the option under Section 7 C of the Act. There is some force in the above contention of the appellant.

As sub-Rule 15 (4-CC) has been amended by G.O.ms.76 (B1) dated 27/6/2002 and Form A 11 prescribed for exercising option for payment of compounded tax under Section 7 C has also been amended by above Government Order effective from 1/7/2002 only, the above Rule 15 (4-CC) and Form A 11 has no application to the appellants as the disputed turnover related to assessment year 2000 - 01. In the absence of any prescribed form, return or manner for exercising option for payment of compounded rate of tax under Section 7 C of the Act (upto 1/7/2002) as rightly contended by the appellants, the inclusion and payment of tax at 4% on the entire works contract receipt amount of Rs.16,48,510/- in the monthly return filed March 2001 and in the Self Assessment return in Form A 11 filed for 2000 - 01 constitute sufficient compliance of the option mentioned in Section 7 C of the Act, as there were no works contract executed by the appellants in the earlier months (i.e, prior to March 2001).

The Madras High Court in the case of the State of Tamil Nadu vs. Ball Bearing Centre reported in 41 STC 264 while delivering judgment in a similar case has held,

> "The application under Section 7 (2) is only option and it does not say that failure to apply in the relevant year deprived the benefit of Section to

an assessee once and for all. In giving effect to sub-Section (2) it is not possible for the rule making authority to fix a time limit, which if not adhered to, will make an assessee loose the benefit of the provision and renders him liable to a higher tax."

Alternatively, the appellants have contended that the Assessing Authority has proposed to assess the entire works contract receipt amount of Rs.16,46,510/- at 11% under Section 3 (2) of the Act for want of details, records and documents relating to works contract in his pre-revision notice, dated 31/12/2000 but after getting reply from the appellants and after verification of relevant details, and records, passed a revised assessment order dated 20/2/2004 levying tax at 11% under Section 3 B of the Act on 70% of the works contract receipt amount (i.e., on Rs.11,52,557/- at 11%) stating that appellant had not exercised their option to pay tax at the compounded rate of 4% at any time not even before the commencement of financial year or along with the monthly return on the commencement of each works contract. The appellants have contended that the above reason was not mentioned in the pre-revision notice dated 31/12/2003 which is amounting to denial of natural justice and a grave irregularity vitiating the entire assessment proceedings. There is considerable force in the above contention of the appellant.

Verification of assessment file revealed that Assessing Authority in his ore assessment notice has observed that the appellants had claimed the compounded rate of tax at 4% on a turnover of Rs.16,48,511/- as works contract but had not furnished any details, records, documents for the works contract turnover and therefore, proposed to assess the entire turnover at 11% but after verification of relevant records filed by the appellants along with their objection, the Assessing Authority took a different stand and proceeded to pass assessment order levying tax at 11% or 10% of works contract turnover under Section 3 B of the Act for the reason that appellant had not exercised their option for payment of compounded rate of tax under Section 7 C of the Act at any time not even before the commencement of the financial year or along with monthly return on the commencement of each work contract. Further, the reason stated by the Assessing Authority in the impugned proceedings i.e., exercising option by applying to the Assessing Authority along with 1st monthly return on the commencement of each works contract provided under Section 7 C (2-A) is effective from 1/7/2002 only and not applicable for assessment year 2000 - 01. Thus in gross violation of principles of natural justice, the learned Assessing Authority has passed the impugned proceedings.

In view of the above observation and findings, I set aside the revision of assessment for the year 2000 - 01 and restore the original assessment.

In fine, appeal stands allowed."

11. Being aggrieved by the same, State of Tamil Nadu, rep. by the Joint Commissioner (CT), Chennai (North) Division, Chennai, has filed appeal, in S.T.A.No.45 of 2005, before the Tamil Nadu Sales Tax Appellate Tribunal, Chennai, on the grounds inter alia that the Appellate Assistant Commissioner, erred in allowing works contract turnover of Rs.16,46,510/- at 11%. After considering the provisions, and the decision of this Court, in State of Tamil Nadu vs. Ball Bearing Centre, {41 STC 264}, the Tribunal has framed the following point for consideration.

> "Whether the order of the Appellate Assistant Commissioner in allowing the appeal, setting aside the revision made by the Assessing Officer is legally correct or not?"

12. Upon consideration of the statutory provisions, and submission of the parties, vide order, dated 20/8/2011, at para 11 in S.T.A.No.451 of 2005, the Tribunal, held as follows:-

> "We have examined the grounds of STA filed by the revenue along with the connected records and notified that the revenue have miserably failed in their case, in countering the order of the Appellate Assistant Commissioner (CT). The grounds adduced by the revenue in the State appeal that the Appellate Assistant Commissioner (CT) has given findings that the one and only works contract executed was in the month of March 2001. Therefore, for the earlier month there was no works contract but only trading activities.

Under this circumstances, they have to pay tax under Section 3 -B of the Tamil Nadu General Sales Tax Act, 1959 only and not under Section 7 C of the Act, unless option was given under Section 7 - C. Therefore, the Appellate Assistant Commissioner's observations are not acceptable. This type of argument by the revenue is vague and not supported by any ruling for the year 2000 - 01. The factual

analysis made the Appellate Assistant Commissioner (CT) with reference to the insertion of sub-Section (2-A) to Section 7-C by Act 22/2002 with effect from 1/7/2002 and the amendment made to the corresponding rule 15 (4-CC) by a Notification issued under G.O.Ms.No.71 (B1) dated 27/6/2002 and findings given by him in support of his observations is legally correct as the amendment referred supra is not applicable to the assessment year 2000 - 01 in this appeal.

13. Though Mr.K.Venkatesh, learned Government Advocate, made submissions, and sought for reversal of the orders, passed by the Appellate Assistant Commissioner (CT)-I, Chennai, and confirmed by the Tribunal, considering the facts and circumstances of the case, we do not find that the appellant has made out a case, for reversal. We are of the view that both the authority and the Tribunal, have properly applied the provisions, and the decision applicable to the case on hand. Revenue has not produced any contrary decision.

14. Accordingly, Tax Case Revision Petition is dismissed. No costs. Substantial questions of law are answered in negative against the revision petitioner.

mvs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.Tamilnadu Sales Tax Appellate, Tribunal
(Additional Bench)
Chennai 104.

2. The Assistant Commissioner (CT) -1,
Chennai 108

3. The Commercial Tax Officer,
Evening Bazaar Assessment Circle Chennai

+1cc to Mr.C.Rehakakumari, Advocate SR.No.88839
+1cc to Special Government Pleader SR.No.88621

RJ(CO)
sm:1.2.2018

T.C.No.55 of 2017