BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.08.2017
Delivered on : 01.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.A.[MD].No.961 of 2014 against WP(MD)No.11407 of 2014
and M.P.(MD)No.1 of 2014

Soundararaja Mills Limited,
Represented by its Chairman and
Managing Director, Ranjit Soundararajan,
GTN Salai, Dindigul. : Appellant/Petitioner

Vs.

The Commercial Tax Officer - II (FAC),
Dindigul. : Respondent/Respondent

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent praying to allow the Writ Appeal and set aside the order of Writ Court dated 16.07.2014 in W.P.(MD)No.11407 of 2014.

Prayer in WP(MD). 11407/ 2014 :
Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for the records on the files of the respondent herein in Asessment No.33265220052/2009-10, dated 16.5.2014, and to quash the same.

For Appellant : Mr.N.Inbarajan
For Respondent : No Appearance

JUDGMENT

K.K.SASIDHARAN, J.

This intra-Court appeal is directed against the order dated 16 July, 2014, in W.P.(MD)No.11407 of 2014, dismissing the Writ Petition filed by the appellant, impugning the assessment order dated 16 May, 2014 on the file of the Commercial Tax officer-II, Dindigul.

2. The appellant is an assessee on the file of the respondent. The appellant appears to have sold its Wind Mill division as a going concern. Since the appellant was of the view that the sale of a going concern would not be liable for payment of tax, which is eligible for exemption, as provided under Section 2(41) of the Tamil

Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956, the revenue was not shown in the books of account.

3. The respondent issued a show cause notice dated 30 November, 2011, to the appellant proposing to treat the income generated by the disposal of the Wind Mill to the extent of Rs.74 Crores liable for tax at 4%. The respondent, after considering the objection raised by the appellant, passed the assessment order determining the tax and penalty. The said order was challenged before the Writ Court.

4. The learned Single Judge dismissed the Writ Petition with a clear finding that the matter requires adjudication of facts and as such, the proper remedy is to file appeal. The order is under challenge in this intra-Court appeal.

5. The learned counsel for the appellant contended that the appellant raised a pure question of law before the Writ Court as to whether the closure of one line of business, namely Wind Mill division would amount to transfer of business as a whole eligible for deduction as a turnover as per Explanation III to Sub-Section (41) of Section 2 of the Tamil Nadu Value Added Tax Act, 2006. Since it was a pure and simple question of law, there is no need to file an appeal before the appellate authority. The learned Single Judge, therefore, erred in dismissing the Writ Petition.

6. None appeared on behalf of the Commercial Tax Officer-II, Dindigul, the respondent in this intra-Court appeal.

7. The appellant is engaged in the manufacture and sale of polyester/viscose yarn. The factory is located at Dindigul. The appellant was also engaged in the generation of electricity by installing the Wind Mills in Tirunelveli District. The appellant sold the Wind Mill as a going concern. The appellant was under the impression that disposal of the Wind Mill as a going concern would qualify the Company for exemption under Section 2(42C) of the Income Tax Act, 1961 and as per Explanation III to Section 2(41) of the Tamil Nadu Value Added Tax Act, 2006.

8. The premises of the appellant was raided by the Enforcement Wing of the Commercial Tax Department. The documents seized from the appellant made the Assessing Officer to issue a pre-assessment notice. The respondent, in the notice dated 30 November, 2011, informed the appellant that it is proposed to treat the income from the disposal of the Wind Mills to an extent of Rs.74 Crores is liable for tax at 4%. The appellant submitted objections on 15 December, 2011, 12 January, 2012 and 21 February, 2012. There were further notices issued by the respondent on 06 November, 2012 and 25 March, 2013, for which, objections were given by the appellant. The appellant appears to have furnished the details to the assessing authority pursuant to the notices referred to above.

9. The respondent issued a revised revision notice dated 21 February, 2014, initiating a proposal to levy tax for the disposal of the Wind Mill division as a whole. The respondent, after giving personal hearing to the appellant, passed the assessment order dated 16 May, 2014.

10. The appellant submitted to the jurisdiction of the assessing authority and contested the matter. Nothing prevented the appellant from challenging the pre-revision notice, in case the Company was of the view that the assessing authority has no jurisdiction to take up the matter. The jurisdictional issue ought to have been raised before subjecting to the jurisdiction of the assessing authority. The appellant is not correct in his contention that the issue involves only a jurisdictional issue with regard to the non-liability of tax under the Tamil Nadu Value Added Tax Act, 2006, in view of Sub-Section (41) of Section 2 of the Tamil Nadu Value Added Tax Act, 2006.

11. The learned Single Judge opined that examining the nature of transaction is necessary in the subject case for deciding the issue raised by the appellant. The effect of the slump sale agreement dated 05 October, 2009, and the question relating to the acceptance of the unregistered slump sale agreement by the Income Tax Department are all matters to be considered on facts. The appellant miserably failed to plead and prove that the issue revolves on the jurisdictional matter alone and the same does not require adjudication by the appellate authority. There are no grounds made out by the appellant to bypass the statutory remedy available. The learned Single Judge analyzed the entire matter in the right perspective and dismissed the Writ Petition. We do not find any reason to take a different view in the matter.

12. In the upshot, we dismiss the intra-Court Appeal. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The Commercial Tax Officer - II (FAC), Dindigul.

+ 1 CC TO Mr.N.INBARAJAN, ADVOCATE IN SR No. 75886

SML
TE/KP/SAR-I : 12/09/2017 : 3P/3C

Judgment made in
W.A.[MD].No.961 of 2014 and
M.P.(MD)No.1 of 2014
Delivered on: 01.09.2017