IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.9173 of 2010
and
M.P.No.1 of 2010

M/s.Victoria Offset Printers,
Represented by its Proprietor,
B.Saravanamuthu,
No.5-A, Thirumalai Nagar,
P.N.Road, Tirupur. ... Petitioner

/Vs./

The Commercial Tax Officer,
Lakshmi Nagar Circle,
Tirupur. ... Respondent

Prayer:- Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the files of the respondent in TNGST.2501754/2004-05 dated 26.02.2010 and quash the same as being contrary to the principle laid down by this Court in the judgment reported in (2008) 15 VST 398 (Sinetech vs. Commercial Tax Officer, Korattur Assessment Circle, Chennai).

For Petitioner :Mr.R.Senniappan

For Respondent :Mr.Mohamed Shaffiq
Special Government Pleader

ORDER

The petitioner herein is an assessee under the respondent herein for the assessment year 2004-05. The petitioner had entered into an agreement in accordance with Section 3(G) of TNGST Act and had paid the tax thereon in accordance with compounding provision of the Act. Subsequent action of the respondent in bringing the same turnover again for the assessment under Section 16 of the TNGST Act is now challenge before this Court. In this writ petition, the only ground raised is that the respondent herein has no jurisdiction or authority to revise the completed assessment made under Section 3(G) of the TNGST Act, in view of the judgment rendered by this Court in the case of [2008] 15 VST 398 (Mad) in the case of Sinetech vs. Commercial Tax Officer, Korattur, Assessment Circle, Chennai, as well as the subsequent confirmation of the said order by the Hon'ble Division Bench of this Court dated 04.07.2017 passed in W.A.No.1536 of 2010. Apart from the reliance on the aforesaid decision, no other ground has been raised in the present writ petition.

2. Heard Mr.R.Seniappan, learned counsel for the petitioner and Mr.Mohamed Shaffiq, learned Special Government Pleader appearing on behalf of the respondent.

3. This Court, by order dated 04.07.2019 passed in W.P.No.4074 of 2010, had occasion to deal with the decision rendered in Sinetech and held it to be inapplicable to the grounds raised therein. The relevant portion of the order reads as follows:

> "21. The decision in Sinetech dealt with a dealer of works contract, who had opted for discharge of taxes under the composition scheme, in terms of Section 7(c) of the TNGST Act. After the dealer was permitted to discharge taxes under the Composition Scheme, the Assessing Authority issued notices under Section 16 of the TNGST Act, proposing to revoke the composition and revise the assessment, by placing reliance on the decision of the Hon'ble Supreme Court reported in the State of Andhra Pradesh vs. Kone Elevators (India) Ltd., reported in 2005 (140) STC 22 (SC), wherein the Hon'ble Apex Court had held that the transaction of supply, erection, commissioning and escalation of lifts constitutes a sale transaction and not a works contract. Placing reliance on the above, the assessing authority proceeded to hold that the transaction of the assessee is a conventional sale transaction and thus, ineligible to opt for composition under Section 7(C) of the TNGST Act, which only enables a works contractor to discharge the taxes under the Composition Scheme. The learned Single Judge held that it was not permissible for the Assessing Officer to withdraw the option under Section 16, once the compounding facility was extended, for which purpose, reliance was placed on a decision of the Hon'ble Division Bench of this Court in the case of Deputy Commissioner of Commercial Taxes, Vellore Vs. Devendran & Company reported in 1981 (47) STC 264.
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> 22. As observed earlier, prior to the decision of the Hon'ble Division Bench in Devendran and Company's case (supra), an earlier Division Bench of this Court in S.Meenakshi's case (supra) had held that when the conditions of the compounding scheme are violated, the dealer goes out of the scheme and renders himself open to assessment as a regular dealer. The decision in S.Meenakshi's case (supra)

(1977) was earlier in point of time than Devendran and Company's case (supra) (1980).

23. The learned Single Judge, had also observed in Sinetech that the decision in Devendran and Company (supra) was affirmed by the Hon'ble Supreme Court in the State of Tamil Nadu V. Devendran & Company reported in 1996 (103) STC 95. The affirmation by the Hon'ble Apex Court was done in the following manner:

"1.We have read the judgment of a Division Bench of the Madras High Court under appeal, now reported in Deputy Commissioner of Commercial Taxes V. Devendran & Co., [1981 (47) STC 264 (Mad)]. We have heard learned counsel. We are satisfied that no interference is called for. Section 16(1)(b) applies only if assessment has been made at a rate lower than the assessable rate. In the instant case, the assessment is not at a rate lower than that at which the turnover ought to have been assessed; it is really a case of seeking to reassess under a different head.

2.In the result, the civil appeals and the special leave petitions are dismissed with no order as to costs."

The issue that arises for consideration in the present Writ Petition is as to whether the ratio in Sinetech on the authority of the Assessing Officer to withdraw the option under Section 16 is permissible or not? To such a ratio, the learned Judge, in Sinetech, had relied on Devendran and Company's case (supra). When the decision in Devendran and Company's case (supra) came to be affirmed by the Hon'ble Apex Court in the manner extracted above, the ratio held in Devendran and Company's case (supra) was neither affirmed nor upheld. But rather, the applicability of Section 16(1)(b) of the TNGST Act on assessments made at a lower rate alone was discussed. Thus, it cannot be said that the Hon'ble Apex Court had affirmed the specific proposition on the authority of the Assessing Officer to withdraw the option under Section 16, as expressed in Devendran and Company's case (supra). Above all, Devendran and Company's case (supra) would have no bearing to the issue involved in the present Writ Petition, inasmuch as they were not dealing with the Scheme of Composition, but merely with the power on reassessment of a regular dealer. With due respects to the Hon'ble Single Judge and without any disrespects, this Court is of the opinion that the decision in Sinetech placing reliance on the later judgment of Devendran and Company's case (supra), in preference of S.Meenakshi's case (supra), may be considered as a decision Per Incuriam.

....

26. The decision in Sinetech came to be affirmed by a Hon'ble Division Bench of this Court in W.A.No.1536 of 2010 through its order dated 04.07.2017. The learned counsel for the petitioner submitted that the ratio laid down in Sinetech, since affirmed by the Hon'ble Division Bench, has become final and thereby, the authorities are not empowered to withdraw the option of compounding exercised by the dealer.

27. The Hon'ble Division Bench of this Court in the aforesaid decision had placed reliance on the decision of the Hon'ble Apex Court in the case of State of Andhra Pradesh vs. Kone Elevators (India) Ltd., reported in 2005 (140) STC 22 (SC) and held that the composition confirming the basis for rejection and denying the composition scheme by the assessing officer was overruled by the Constitutional Bench of the Hon'ble Apex Court and thus, the very basis for revisiting the composition scheme did not survive.

28. However, the issue involved in the present writ petition is as to whether the composition scheme is open for revisit under any circumstances, including violation of the conditions of the very scheme itself. This aspect was not addressed by the Hon'ble Division Bench and thus, the reliance on the decision of the Hon'ble Division Bench of this Court, confirming the decision in Sinetech, in support of the proposition that the composition scheme cannot be subject of re-assessment under any circumstances, may not be relevant. In other words, the Hon'ble Division Bench, had not examined the question, which arises for consideration before this Court in the present case, as to whether it is open to re-assess a dealer, who had opted for composition scheme and violated the conditions of the very composition scheme. Thus, the decision relied upon by the learned counsel for the petitioner in Sinetech as confirmed by the Hon'ble Division Bench of this Court, is not applicable."

4. The above extract is self explanatory. As such, when the conditions of the compounding scheme are violated, the dealer would go out of the scheme and rendered himself open to assessment as a regular dealer and the decision in Sinetech, since rendered Per Incuriam, cannot be of any assistance to a dealer who has violated the conditions of a

composition scheme and hence, the petitioner cannot take shelter under the aforesaid two decisions. As such, only ground raised by the petitioner that the respondent has no jurisdiction to reopen the assessment in view of the decision in Sinetech, cannot be sustained.

5. However, if the petitioner is aggrieved against the impugned revision of the assessment, it would be appropriate to give them an opportunity to challenge the same by way of an appeal under Section 31 of the TNGST Act.

6. In the light of the above observations, this Writ Petition stands disposed of with liberty to the petitioner to challenge the impugned revision of the assessment, within fifteen (15) days from the date of receipt of a copy of this order. Consequently, Connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

sm/DP

To

The Commercial Tax Officer,
Lakshmi Nagar Circle,
Tirupur.

+1cc to Mr.R.Senniappan, Advocate SR.No.56149(25/09/2020)

+1cc to Special Government Pleader SR.No.56621(25/09/2020)

W.P.No.9173 of 2010
and M.P.No.1 of 2010

GMY(09/07/2020)