IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

WRIT APPEAL NO.963 OF 2018
AND
C.M.P.NO.8172 OF 2018

The Assistant Commissioner (CT) (FAC)
Arumbakkam Assessment Circle
59, Taylors Road, Chennai 600 010.
... Appellant/Respondent

-Vs-

M/s.Spectrum Decors (Chennai) Private Ltd
Rep.by its Managing Director R.Jyothi Prakash
No.1, Chitra Enclave, SBI Officers Colony I Main Road
Arumbakkam, Chennai 600 106.
... Respondent/Petitioner

For Appellant : Mr.Mohammed Shafiq,
Special Govt Pleader (Taxes)

For Respondent : Mr.P.V.Sudhakar

Prayer : Appeal under Clause 15 of the Letters Patent to set aside the order of this Court dated 17.03.2015 in W.P.No.6130 of 2015.

सत्यमेव जयते

W.P.No.6130 of 2015:-

Writ Petition filed under Article 226 of the India, may be pleased to issue a Writ of Certiorari or any other appropriate writ, direction or order calling for the records of the respondent in his proceedings in TIN/3371146134/2009-10 and quash the Assessment order dated 09.02.2015 passed therein and pass such further or other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and render justice.

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J U D G M E N T

(Judgment of the Court was delivered by DR.VINEET KOTHARI, J.)

The Revenue has filed this Writ Appeal against the order of the learned Single Judge dated 17.03.2015 allowing the Writ Petition filed by the Assessee M/s.Spectrum Decors (Chennai) Private Limited viz, W.P.No.6130 of 2015 and holding in favour of the Assessee that the Assessee, who executed the Works Contract in question, even though had not filed the formal application to the assessing authority along with the first monthly return in prescribed Form No.'L' as required under Section 6(2) of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as 'TNVAT Act'), still the Assessee would be entitled to avail the facility of payment of tax at compounded rate as prescribed under Section 6 of the Act because the Assessee had filed the regular monthly returns in Form 'L' and had satisfied the condition of Section 6 of the Act to the effect that it had not made any purchase of the goods from outside the State of Tamil Nadu.

2. The learned Single Judge, in the order impugned before us by the Revenue, has held as under.

> "It is evident from the above that the petitioner has not purchased the goods from other States and there is no need to file separate application under Section 6 of the Act. Admittedly, the respondent has not made any purchase of the goods outside the country. The impugned order dated 09.02.2015 is set aside. Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed."

3. Learned counsel for the Revenue Mr.Shafiq submitted that the specific provision in Section 6(2) of the Act requires the dealer, who executes the Works Contract, to apply to the assessing authority for opting to pay the tax at compounded rate as prescribed under Section 6 of the Act as contra distinguished from the payment of regular tax on Works Contract under Section 5 of the Act. He submitted that even though the Assessee had filed the monthly returns in Form 'L', and had not effected any purchase of goods from outside the State of Tamil Nadu, but in the absence of the application filed by the Assessee to his exercise of his option to pay the tax under Compounding Scheme under Section 6 of the Act, the said benefit of composition could not be allowed to the Assessee.

4. Per contra, the learned counsel for the Assessee Mr.P.V.Sudhakar has supported the impugned order and urged that the assessing authority himself had accepted the satisfaction

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of the condition under Section 6(2) of the Act by the Assessee that the Assessee did not effect any purchase of goods from outside the State and had also filed the monthly return in prescribed Form 'L' under Section 6(2) as against Form 'I' for payment of tax under Section 5 of the Act. Therefore, the availing of the benefit of compounding under Section 6 of the Act was permissible for the Assessee and the requirement of filing a formal application under Section 6(2) was only directory and not mandatory condition.

5. Having heard the learned counsel for both the parties, we are of the opinion that there is no merit in the present appeal filed by the Revenue and we are of the opinion that the Assessee had complied with the substantial conditions for availing the benefit of payment of tax at the compounded rates under Section 6 of the Act. The substantial condition to be satisfied in the said provision of Section 6(2) of the TNVAT Act was that the Assessee does not effect any purchases of goods from outside the State (or) imports the goods from outside the State and therefore, he can opt to pay the tax at the Compounding Rates under Section 6(2) of the Act and also file the monthly return in Form 'L' as prescribed under the Rules.

6. In the impugned Assessment Order passed, the Assessing Authority himself has admitted this position of compliance of the substantial condition by the Assessee. The relevant portion of the impugned Assessment order dated 09.02.2015 is quoted below for ready reference.

> "Though the dealer had not purchased from outside the State, which is one of the conditions prescribed under Section 6, their claim that they are entitled to the benefit of payment of tax under compounding rate, for which they had not produced any documentary evidence of filing option letter before the assessing authority, which is the mandatory condition as prescribed under Section 6 of the TNVAT Act, 2006 does not hold good. They have not filed the evidence of filing option letter, neither to the Enforcement Wing at the time of inspection nor to the Assessing Officer at the time of filing their objections. It shows that they had not fulfilled their mandatory requirement. Hence, the dealer is not eligible to file monthly returns under Form 'L' but has to file under Form 'I' only. Therefore, their request to drop the proposal is not substantiated with evidence and is overruled."

7. There is no dispute before us that the Assessee also filed monthly returns in terms of Section 6 in prescribed Form

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'L' and not in Form 'I' applicable to the payment of regular tax under Section 5 of the Act.

8. The Honourable Supreme Court, in the case of "Commissioner of Central Excise -Vs- Hari Chand Shri Gopal and Others (2011) S.C.C.236", while dealing with the Excise Laws in similar circumstances, made a fine distinction between 'subtantial compliance' and 'intended use' in the Fiscal Statutes in the following manner. We quote Paragraphs 32 to 34 from the said judgment.

> "DOCTRINE OF SUBSTANTIAL COMPLIANCE AND `INTENDED USE':
> 32.The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably expected of it, but failed or faulted in some minor or inconsequent aspects which cannot be described as the "essence" or the "substance" of the requirements. Like the concept of "reasonableness", the acceptance or otherwise of a plea of "substantial compliance" depends upon the facts and circumstances of each case and the purpose and object to be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the rule or the regulation. Such a defence cannot be pleaded if a clear statutory prerequisite which effectuates the object and the purpose of the statute has not been met. Certainly, it means that the Court should determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance. Substantial compliance means "actual compliance in respect to the substance essential to every reasonable objective of the statute" and the court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed.
>
> 33. Fiscal statute generally seeks to preserve the need to comply strictly with regulatory requirements that are important, especially when a party seeks the benefits of an exemption clause that are important. Substantial compliance of an enactment is insisted, where mandatory and directory requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantially complied with notwithstanding the non- compliance of directory

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requirements. In cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and to forgive non-compliance for either unimportant and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted.

34. The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the "substance" or "essence" of the statute, if so, strict adherence to those requirements is a precondition to give effect to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the "essence" of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance. In other words, a mere attempted compliance may not be sufficient, but actual compliance of those factors which are considered as essential."

9. A similar view was taken by this Court also in the case of "GE T & D India Ltd -Vs- Commissioner of Central Excise & Service Tax" in C.M.A.No.2032 of 2019 dated 06.12.2019, wherein it was held as under.

"10. We do not find anything in the order of the learned Tribunal, which could deny the benefit of the Composition Scheme to the Assessee and therefore, the order of remand passed by the learned Tribunal on 01.06.2018 directing the Assessee to go for regular assessment instead of Composition Scheme merely because the option was not conveyed to the Department on the part of the Assessee in writing, even though the Revenue had not prescribed any format for the same, could not be a valid ground to deny the benefit to the Assessee. If a previously rendered judgment of the same Tribunal authored by the same Member was brought to the notice of the learned Tribunal by way of a Rectification Application, it was all the more duty of

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the learned Members of the Tribunal to have rectified their mistake in their order dated 01.06.2018 by applying their previously rendered judgment in the case of Vaishno Associates -Vs- CCE &ST, Jaipur" [2018] VIL 217 rendered on 06.03.2018 to the case of the present assessee.

11. The failure on the part of the learned Tribunal to do so resulted in miscarriage of justice and unnecessary litigation brought before this Court firstly in the form of writ petition, which upon the objection raised from the side of the Revenue, which also cannot be appreciated much, had to be converted into a regular appeal under the provisions of Section 35G of the Act."

10. Likewise, we do not find any prescribed Form for exercise of option under Section 6(2) of the TNVAT Act also, though the said Section stipulates that any dealer who executes Works Contract, may apply to the assessing authority, along with the first monthly return his option to pay tax under Sub-section (1) to Section 6 of the Act. The said Section 6, to its relevant extent is also quoted below for ready reference.

6. Payment of tax at compounded rate by works contractor.-
(1) Notwithstanding anything contained in this Act, every dealer, 1[other than the dealer who purchases* [or receives] goods from outside the State or imports goods from the outside the Country] may, at his option, instead of paying tax in accordance with section 5, pay, on the total value of the works contract executed by him in a year, tax calculated at the following rate, namely:- (i) Civil works two per cent of the total contract contract: value of the civil works executed; (ii) Civil maintenance two per cent of the total contract works contract : value of the maintenance works executed; (iii) All other works 2[Five] per cent of the total contract contracts: value of the works executed.

(2) Any dealer, who executes works contract, may apply to the assessing authority along with the first monthly return for the financial year or in the first monthly return after the commencement of the works contract, his option to pay the tax under sub-section (1) and shall pay the tax during the year in monthly instalments and for this purpose, he shall

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furnish such return within such period and in such manner as may be prescribed.

(3) The option exercised under sub-section (1) shall be final for that financial year.

(4) A dealer, exercising option under sub-section (1) shall, so long as the option remains in force, not be required to maintain accounts of his business under this Act or the rules made there under except the records in original of the works contract, extent of their execution and payments received or receivable in relation to such works contract, executed or under execution.

(5) The dealer, who pays tax under this section, shall not 1[collect any amount by way of tax or purporting to be by way of tax and shall not] be entitled to input tax credit on the goods purchased by him.

Explanation.- For the purpose of this section "civil works contract" includes civil works of construction of new building, bridge, road, runway, dam or canal including any lining, tiling, painting or decorating which is an inherent part of the new construction and any repair, maintenance, improvement or up gradation of such civil works by means of fixing and laying of all kinds of floor tiles, mosaic tiles, slabs, stones, marbles, glazed tiles, painting, polishing, partition, wall panelling, interior decoration, false ceiling, carpeting and extra fittings, or any manner of improvement on an existing structure."

11. The terms of Sub-section (2) to Section 6, which employs the terms "may apply to the assessing authority" prima facie indicates that the said requirement is of a directory nature and not mandatory. The words used are not "shall" but "may". The words "may' usually would render compliance of the provision directory and not mandatory. Therefore, the said requirement of exercise of option by way of application cannot be said to be a condition precedent for availing the benefit of payment of compounded rate of tax under Section 6 of the Act. The substantial compliance with the provisions of the Act in the form of not making any purchases from outside the State and payment of tax under monthly returns under Form 'L' has been satisfied by the Assessee.

12. Therefore, merely lapse of making a formal application, though no such form is prescribed under the Rules, cannot be said to be fatal to apply Section 6 of the Act to the Assessee

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in the present case. The principles of 'Substantial Compliance' or 'Substantial Justice' as against the narrower approach of considering the provisions in stricto sensu should prevail in such case to meet the ends of subtantial justice even in the case of Fiscal Statutes, as is available before us in the present case.

13. Therefore, we are of the view that the learned Single Judge had rightly allowed the benefit of Section 6 to the Assessee in the present case and the present appeal filed by the Revenue, assailing the said order of the learned Single Judge deserves to be dismissed. Accordingly, the Writ Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Deputy Registrar (CJ Conf.)

//True Copy//

Sub Assistant Registrar

KST

To

The Assistant Commissioner (CT)(FAC)
Arumbakkam Assessment Circle,
59, Taylors Road, Chennai-600 010.

+1cc to Mr.P.V.Sudhakar, Advocate, S.R.No.105856
+1cc to the Special Government Pleader, S.R.No.106592

W.A.No.963 of 2018

SJ(CO)
CS/03/02/2020

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