BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated : 30.01.2019
CORAM :
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P(MD)No.19470 of 2016
and
W.M.P(MD).Nos.14034 and 14035 of 2016

Tvl.Srinivasa Enterprises,
Rep., by its Managing Partner,
S.Krishnamurthy ... Petitioner

Vs.

The Assistant Commissioner (CT),
Woraiyur Assessment Circle,
Tiruchirappalli. ... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records on the file of the respondent in TIN.33773442780/2013-14 dated 08.09.2016 and quash the same.

For Petitioner : Mr.R.Senniappan
For Respondent : Mr.Aayiram K.Selvakumar
Additional Government Pleader

ORDER

The petitioner is an assessee registered with the respondent. The subject matter pertains to the assessment year 2013-2014. Tvl.Madras Cements, Ariyalur had placed an order with the writ petitioner, who in turn placed an order with Tvl.Ador Fontech, Nagpur for supply of the said goods. The goods had been despatched directly by the Nagpur dealer to Tvl.Madras Cements, Ariyalur. But then the invoice reflected the name of the writ petitioner as the purchaser. The respondent took the stand that the petitioner is liable to be levied with tax. They issued notice in this regard and after giving an opportunity of personal hearing to the petitioner, passed the impugned order dated 08.09.2016. Questioning the same, this writ petition has been filed.

2. The learned counsel appearing for the writ petitioner firstly contended that the case on hand is governed by Section 6(2) of the Central Sales Tax Act, 1956. The said provisions reads as under:-

"(2) Notwithstanding anything contained in sub-section (1) or sub-section (1A), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods,-

(a) to the Government, or

(b) to a registered dealer other than the Government, if the goods are of the description referred to in sub-section (3) of Section 8,

shall be exempt from tax under this Act:"

3. Even a bare reading of the aforesaid provisions indicates that the subsequent sale must have taken place during the movement of goods. The petitioner's counsel asserted that in this case, the subsequent sale occurred only when the goods were transit from Nagpur to Ariyalur. This factual assertion is strongly contested by the respondent.

4.Ms.C.Kayalvizhi, Assistant Commissioner (ST) (RAC), Woraiyur Circle, Trichy is present in person and assisted this Court and she pointed out that no subsequent sale took place during the transit.

5. This Court posed a specific question to the learned counsel appearing for the petitioner as to when the claimed subsequent sales had taken place. In the affidavit filed in support of the writ petition, the relevant details have not been set out. Of course it has been contended in atleast two places, in which affidavit that the subsequent sale took place during the movement of goods. But then the date when the goods were despatched from Nagpur and the date, when the subsequent sale was made by the petitioner in favour of the Tvl.Madras Cement, Ariyalur, are not mentioned in the affidavit. In this regard, I will have to refer to the decision of the Hon'ble Supreme Court in the case of ***Bharat Singh and others Vs. State of Haryana and others*** reported in (***1988) 4 SCC 534*** held as follows:-

> "***I****n our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the Court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it."*

6. Therefore, I have to necessarily hold that eventhough there is a pleading, there is no proof forthcoming from the materials on record. The learned counsel appearing for the petitioner also contended that the respondent has no jurisdiction to levy tax. Eventhough many other contentions have been projected, I am of the view that this is not a fit case, in which the petitioner should be allowed to by-pass the statutory remedy of appeal available to him. This is a fiscal matter. Therefore, entertaining the writ petition is the matter of discretion. _

7. Since the case of the writ petitioner is strongly contested by the respondent on facts as well as on law, it is a fit case in which the writ petitioner should be relegated to availing the alternative appeal remedy. This writ petition is dismissed.

8. The learned counsel appearing for the writ petitioner submits that this writ petition was filed well within time and that the petitioner had also paid 10% of the tax amount.

9. Considering this conduct of the petitioner, this Court grants four weeks time to the petitioner from the date of receipt of a copy of this order to file a statutory appeal. Since the petitioner had already remitted 10% of the tax amount, it is enough that the petitioner remits 15% more, while filing the statutory appeal. The Appellate Authorityshall entertain the appeal without reference to limitation or insistence on payment of any statutory deposit.

10. With the above observation and liberty, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

11. Registry is directed to return the original order to the petitioner's counsel.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Assistant Commissioner (CT),
Woraiyur Assessment Circle,
Tiruchirappalli.

2. The Section Officer,
Er Section,(2 copies),
Madurai Bench of Madras High Court, Madurai

+1 CC to SPL GP (SR-43832[F] dated 31/01/2019)
+1 CC to Mr.S.RAJA JEYA CHANDRA PAUL, Advocate (SR-43700[F] dated 31/01/2019)

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30.01.2019

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