IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.12.2019

Pronounced on : 23.01.2020

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.35391 of 2005
(O.P.No.1181 of 2003)

Voltas Limited,
503, Anna Salai,
Chennai .. Petitioner

vs.

The Deputy Commissioner (CT),
Chennai (Central)Division,
Greams Road,
Chenai 600 006. .. Respondent

Prayer: The above Petition was originally filed before the Tamil Nadu Taxation Special Tribunal and numbered as O.P.No.1181 of 2003. The said O.P was filed to call for the records on the file of the respondent in Rc.13747/02/B2/S.R.125/02 dated 30.09.2003, quash the proceedings of the respondent in RC.13747/02/B2/S.R.125/02 dated 30.09.2003 and direct the respondent to accept the application for settlement dated 25.9.2002 filed by the petitioner and issue a certificate of settlement of dispute in Form-IV in accordance with the provisions of Section 8 of the Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002 r/w Tamil Nadu Sales Tax (Settlement of Disputes) Rules 2002.

For Petitioner : M/s.N.Inbarajan
For Respondent : Mr.V.Haribabu, AGP (T)

ORDER

The above writ petition was earlier filed as OP.No.1181 of 2003 under Section 7 of the Tamil Nadu Act 42 of 1992 before the Tamil Nadu Taxation Special Tribunal, Chennai. Subsequent to abolition of the above Tribunal, O.P.No.1181 of 2003 was transferred to this Court and renumbered as W.P.No.35391 of 2005.

2. Earlier by an assessment order dated 28.6.2001 for the assessment year 1995-96, an amount of Rs.62,566/- was confirmed against the petitioner as the differential tax payable by the petitioner and an amount of Rs.7,09,875/- was imposed as a penalty under section 12 (3) and 22 (2) of the TNGST Act, 1959 on the petitioner.

3. The petitioner preferred an appeal before the Deputy Commissioner (CT) Appeals vide A.P.No.156 of 2001 by admitting the tax liability partly by confining it to Rs.15,718/-and the penalty of Rs.7,09,875/- imposed on the petitioner.

4. During the pendency of the above appeal, Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002 was enacted with effect from 1.7.2002. In terms of the above enactment, assessees were entitled to settle their disputes with the commercial tax department. Under these circumstances, the petitioner filed an application on 25.9.2002 and enclosed an amount of Rs.9,824/-.

5. The petitioner computed the aforesaid amount in terms of section 7 (1) (b) of the Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002 and filed an application on 25.9.2002. The application was acknowledged in Form-II under the provisions of the Tamil Nadu Sales Tax (Settlement of Disputes) Rules, 2002.

6. A show cause notice dated 9.4.2003 was thereafter issued to the petitioner to show cause as to why the application filed by the petitioner should not be rejected on the ground that the petitioner had not paid the amounts under section 7(1)(c) Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002.

7. The petitioner replied to the said notice which culminated in the impugned order dated 30.9.2003. By the impugned order, the petitioner has been asked to pay for a sum of Rs.1,04,516/-on or before 15.10.2003 failing which, the application filed for settlement of the dispute would be rejected.

8. Aggrieved by the impugned order dated 30.9.2003 asking the petitioner to pay the aforesaid amount the above O.P.was filed before the Tribunal to direct the respondent to accept the application filed by the petitioner and issue a certificate in Form IV in accordance with the provisions of the said Act and the Rules made under and quash the impugned order dated 13.9.2002.

9. It is the contention of the respondent that the petitioner has worked for the amount payable under the settlement scheme on 50% of the total tax due and 25% of the said 50% as penalty which is contrary to the letter and spirit of the scheme under the Act.

10. According to the respondent, the petitioner has to pay additional amount of Rs.1,04,516/-which is 15% of the penalty levied under Section 12 (3) and 22 (2) of the TNGST Act, 1959 in terms of Section 7(1)(c) of Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002.

11. Heard the learned counsel for the petitioner and the respondent.

12. It is the contention of the learned counsel for the petitioner that the provision has to be read plainly and there is nothing to be intended by asking the petitioner to pay amounts separately towards the penalty imposed under Section 12(3) and 22(2) of the TNGST Act, 1959. Alternatively, learned counsel for the petitioner submits that in case, the court is inclined to reject the above contention of the petitioner, the petitioner may be given an opportunity to pay the aforesaid amount to settle the dispute

13. I have considered the provisions of the Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002. The said act provides for an expeditious settlement of disputes relating to arrears of tax, penalty or interest pertaining to sales tax and the matters connected therewith or incidental thereto. The rate applicable in determining the amount payable for settling the dispute is provided in Section 7 of the said Act. Section 7 of Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002 reads as under:-

> 7. (I) The amount under sub-section (1) of section 6. shall be determined as follows:-
>
> 7(1) (a) Where it relates to any tax in dispute, at the rate of fifty percentum of the tax in dispute;
>
> 7(1)(b) Where it relates to any tax and penalty in dispute, at the rate of fifty percentum of the tax in dispute and at the rate of twenty-five percenturn of such fifty percentum of the tax in dispute;
>
> 7(1)(c) Where it relates to any penalty in dispute, at the rate of fifteen percentum of the penalty in dispute;
>
> 7(1)(d) Where it relates to any interest in dispute, at the rate of twenty-five percentum of the interest in dispute;
>
> 7((2) The irterest payable by an applicant on the amount determined under clauses (a), (b) and (c) of sub-section (1) shall be twenty-five percentum of the interest payable at the rate specified under the relevant Act and the same; shall be paid before the issue of certificate under section 8.

14. According to the learned counsel for the petitioner, rate applicable to the petitioner is under Section 7(1)(b) of the Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002 as the petitioner was in arrears of tax and penalty. It is submitted that as per the above provision, the petitioner required to pay 50% of tax in dispute and 25% of such 50% of tax and thus the amount paid by the petitioner was as follows:-

> " 50% of Rs. 15,718+25% of 50% of 15,718= 7859+1965 thus totalling to Rs.9824/-."

15. Whereas, according to the respondent the petitioner has to pay additional amount of Rs.1,04,516/-being 15% of the penalty in terms of Section 7(1)(c) of the Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002.

16. It is submitted that the cases of penalty alone not levied as a result of levy of tax would fall under Section 7(1)(c) of the Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002 and cases of tax and penalty would fall under Section 7(1)(b) of the Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002. It is submitted that amount of Rs.7,09,875/- relates to penalty and not penalty levied as a result of the tax assessed and therefore the petitioner was additionally liable to pay sum of Rs.1,04,516/-under Section 7(1)(c) of the Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002.

17. This is a case where the disputed tax is lesser than the penalty imposed as a result of which if the case is settled in Section 7(1)(b) of the Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002, amount payable by the petitioner is far below 15% of the penalty that would have been payable by the petitioner if the case was pertaining to penalty simplicitor and was to be settled under Section 7(1)(c) of the Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002.

18. The provision of the Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002 is to be read plainly without any addition or deletion. Though the settlement of dispute is to prejudice of the revenue, nevertheless it is on account of the defect in the method prescribed under the provisions of the Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002. Therefore, the impugned order cannot be sustained. The Act has a defective design as a result of which an unintended benefit accrues to the petitioner. In this case, the petitioner's case is covered under the situation contemplated under Section 7(1)(b) of the Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002.

19. The cardinal rule of principle in tax laws is "nothing to be inferred or intended".

20. In Cape Brandy Syndicate's (T921) 1KB 64 it was held as follows:-

> " i. In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can look fairly at the language used."

21. The above passage has been followed by the Hon'ble Supreme Court in several cases. In State of Bombay v.Automobile and Agricultural Industries Corpn.[(1961) 12 STC 122 (SC)], it was held under:-

> "But the courts in interpreting a taxing statute will not be justified in adding words thereto so as to make out some presumed object of the legislature. … If the legislature has failed to clarify its meaning by the use of appropriate language, the benefit thereof must go to the taxpayer. It is settled law that in case of doubt, that interpretation of a taxing statute which is beneficial to the taxpayer must be adopted."

22. Recently also the Hon'ble Supreme Court in Assistant Commissioner, Commercial Taxes and Others vs. Lis (Registered), (2018) 15 SCC 283: 2017 SCC OnLine SC 1562 at page 286 reiterated the above principal and refer to the above decisions and observed as under:-

> 12.Time and again, it has been emphasised that a taxing statute cannot be made applicable to a citizen by unnatural or unreasonable extensions thereof. A recent view of this Court in this regard is available in Shabina Abraham v.CCE [Shabina Abraham v.CCE, (2015) 10 SCC 770 : (2015) 322 ELT 372] wherein a judgment of the Bombay High Court which is of considerable vintage i.e.CIT v.Elis C. Reid [CITv.Elis C. Reid, 1930 SCC OnLine Bom 58: AIR 1931 Bom 333], has been referred to and, in fact, relied upon to observe that reasons of morality and fairness can have no application to bring a citizen who is not within the four corners of the taxing statute within its fold so as to make him liable to payment of tax. In this regard paras 32, 33 and 34 of the opinion rendered in Shabina Abraham[Shabina Abraham v.CCE, (2015) 10 SCC 770 : (2015) 322 ELT

372] would commend to us for recapitulation and, therefore, are extracted below: -

> 32. The impugned judgment in the present case has referred to Elis C. Reid case [CITv.Elis C. Reid, 1930 SCC OnLine Bom 58 : AIR 1931 Bom 333] but has not extracted the real ratio contained therein. It then goes on to say that this is a case of short levy which has been noticed during the lifetime of the deceased and then goes on to state that equally therefore legal representatives of a manufacturer who had paid excess duty would not by the self-same reasoning be able to claim such excess amount paid by the deceased. Neither of these reasons are reasons which refer to any provision of law. Apart from this, the High Court went into morality and said that the moral principle of unlawful enrichment would also apply and since the law will not permit this, the Act needs to be interpreted accordingly. We wholly disapprove of the approach of the High Court. It flies in the face of first principle when it comes to tax statutes. It is therefore necessary to reiterate the law as it stands. In Partington v.Attorney eneral [Partington v.Attorney General, (1869) LR 4 HL 100], Lord Cairns stated: (LR p. 122)
>
> > '… If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute.'
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> 34. This Court has, in a plethora of judgments, referred to the aforesaid

principles. Suffice it to quote from one of such judgments of this Court in CST v.Modi Sugar Mills Ltd. [CSTv.Modi Sugar Mills Ltd., (1961) 2 SCR 189 : AIR 1961 SC 1047] SCR at p. 198: (AIR p. 1051, para 11)

> " 11 … in interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed: it cannot imply anything which is not expressed; it cannot import provisions in the statutes so as to supply any assumed deficiency.'"

23. Though , the petitioner benefits by being a lesser amount under Section 7(1)(b) of the Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002, nevertheless it is purely on account of the defect in the Act. The benefit which flows from such defective drafting of the Act cannot be denied based on the presumed and assured intention of the legislature. Unless the law was amended, the benefit of such enactment cannot be denied.

24. In the light of the above discussion, I am of the view that the impugned order passed by the respondent is unsustainable. Accordingly, the impugned order is quashed and the writ petition is allowed with consequential benefit to the petitioner. No cost.

Sd/-

Assistant Registrar(C.S.IV)

/True Copy/

Sub Assistant Registrar

To

The Deputy Commissioner (CT), Chennai (Central)Division,
Greams Road,Chenai 600 006.

+1 cc to M/s.N.Inbarajan,Advocate Sr.No.4567
+1 cc to The Special Government Pleader Sr.No.5410

AKM/11.03.2020/7P- 4C /

Order in
W.P.No.35391 of 2005