(2010) 12 MAD CK 0279

Madras High Court (Madurai Bench)

Case No: Writ Petition No. 8501 of 2009 and M.P. No. 1 of 2009

R. Karunanithi	APPELLANT
Vs	
The Secretary to Government Commercial Taxes and Registration Department and The Commissioner of Commercial Taxes	RESPONDENT

Date of Decision: Dec. 14, 2010

Acts Referred:

- Central Sales Tax Act, 1956 - Section 10
- Tamil Nadu General Sales Tax Act, 1959 - Section 24(8)
- Tamil Nadu General Sales Tax Rules, 1959 - Rule 24(8)
- Tamil Nadu Government Servants Conduct Rules, 1973 - Rule 20(1)

Hon'ble Judges: N. Paul Vasanthakumar, J

Bench: Single Bench

Advocate: T. Mohan, for Ganesan, for the Appellant; S.C. Herold Singh, Gov. Advocate, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

N. Paul Vasanthakumar, J.

The prayer in this Writ Petition is to quash the order of punishment order passed by the second Respondent dated 30.07.2008 as confirmed by the order passed by the first Respondent through G.O.(D) No. 241 Commercial Taxes and Registration (A1) Department dated 20.05.2009.

2. The case of the Petitioner is that he is working as Deputy Commercial Tax Officer and while he was working in the office of the Commercial Tax Office, Thirumangalam, Madurai District, a charge memo was issued against him by the second Respondent on 10.05.2006 alleging five charges said to have been committed during his tenure from 08.08.2001 to 30.05.2003 as Deputy Commercial Tax Officer, Thirupparankundram Assessment Circle. The Petitioner denied the charges and thereafter the Assistant Commissioner, Dindigul, was appointed as Enquiry Officer, who after enquiry submitted his report holding that the charge Nos. 1, 2, and 3 as not proved, charge No. 4 as proved and charge No. 5 as partly proved. However, the finding of the Enquiry Officer was not accepted by the Commissioner of Commercial Taxes, who deferred with the findings in respect of charge Nos. 1,4 and 5 and the Petitioner was called upon to submit his reply regarding the deferring views and the same was also submitted by the Petitioner. After perusing the same, a punishment order was passed by the second Respondent on 30.07.2008 by imposing a stoppage of increment for two years with cumulative effect, inclusive of the period, if any, spent on leave and the punishment will affect the Petitioner''s pension.

3. The Petitioner filed an appeal against the said order before the first Respondent, which was also rejected through G.O.D. No. 241 Commercial Taxes and Registration Department dated 20.05.2009. The said orders are challenged in this Writ Petition on the ground that the charge No. 1 framed against the Petitioner is not maintainable in view of the circular issued by the Principal Commissioner, dated 17.02.2000, and the charge No. 4 cannot be issued against the Petitioner for issuing C Forms to a registered dealer, in view of the judgment of the Division Bench of this Court made in W.P. Nos. 1379 and 1380 of 1967 and 840 of 1971 dated 27.04.1971 as well as the judgment of the learned Single Judge in Chandra Paints (Madras) Ltd., v. Commercial Tax Officer, Royapettah Assessment Circle, Madras-5 reported in 1986 STC 335. In the said judgment, it is stated that once registration certificate is issued, the certificate holder should be issued with ''C'' Forms.

4. The learned Counsel for the Petitioner submits that charge No. 5 is a cumulative charge framed in respect of the charges 1 and 4 and if charges 1 and 4 are held not proved, charge No. 5 cannot also be proved and the punishment imposed is bound to be set aside.

5. The Respondents filed counter affidavit by contending that as per Section 24(8) of the Tamil Nadu General Sales Tax Rules, 1959 (hereinafter referred to as "the Rules"), the Registering Authority shall, on receiving the application in Form D verify the correctness of the information furnished in the application and make such inquiry, or caused such inquiry to be made as it may consider necessary, and after satisfying itself that the application is in order, shall issue within 30 days from the date of receipt of the application, a certificate or registration in Form D-1. It is also contended in the counter affidavit that the Petitioner also not verified the business

activities of the dealer, who was issued with the registration certificate and issued ''C'' Forms, which were also misused by the dealer and therefore the charges framed insofar as charges 1 and 4 are found proved by the disciplinary authority, based on which punishment was imposed, which was also confirmed in appeal.

6. Heard the learned Counsel for the Petitioner and the learned Government Advocate for the Respondents.

7. The charges levelled against the Petitioner in respect of charges Nos. 1, 4 and 5, read as follows:

Charge No. 1:

That Thiru R. Karunanidhi, Deputy Commercial Tax Officer, during his tenure from 08.08.2001 to 30.05.2003 as Deputy Commercial Tax Officer, Thirupparankundram Assessment Circle, and while functioning as Commercial Tax Officer (FAC) in that Assessment Circle had issued Registration Certificate on 08.04.2002 (valid from 04.04.2002) to one Thiru. K.T. Jayachandran of Tvl. Jayaa Plastics, without physically verifying the place of business as per Rule 24(8) of the TNGST Rules, and also the nature of the commodity that was proposed to be dealt with by the dealer i.e. adequate space for storing the commodity, thereby acted with gross negligence in the discharge of his duty as an Registering Authority, and, thus paved the way for clandestine business of the dealer Tvl. Jayaa Plastics.

Charge No. 4:

That Thiru R. Karunanidhi, Deputy Commercial Tax Officer, during his tenure as Commercial Tax Officer (FAC) in Thirupparankundram Assessment Circle had issued 10 leaves of "C" Forms on 31.07.2002 without verifying the details of requirement had paved the way for misuse of "C" Forms that was lost during transit, for which the loss of revenue to the State exchequer cannot be quantified.

Charge No. 5:

That the said Thiru R. Karunanidhi, Deputy Commercial Tax Officer, by his aforesaid lapse, has failed to discharge his duties as a Registering Authority and Assessing Officer diligently and to safeguard the interests of the Revenue and has, thereby, acted in a manner unbecoming of a Government servant, violative of Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, 1973.

8. From the perusal of the charges, it is evident that the allegation is that the Petitioner has not followed the Rule 24(8) of the Rules by physically verifying the place of business. As rightly contended by the learned Counsel for the Petitioner on 17.02.2000, the Commissioner of Commercial Tax, Chepauk, Chennai - 05, issued a circular stating that the Registering authority shall issue a certificate of registration within a week from the date of receipt of the application, if all the requirements indicated in the application form are satisfied and the registration fee had also been

paid. If the Registration Certificate cannot be given within a week''s time, a reply should be sent to the person applying for Registration giving the reasons. In Clause (2) of the circular, it is stated that the place of business need not be inspected before the issuance of Registration Certificate. In the last paragraph of the said circular, it is further stated that the Deputy Commissioner (CT) and Assistant Commissioner (CT) are instructed to ensure that the registering authorities faithfully implement the above instructions. The Registering Authorities may be warned that any deviation in this respect will be viewed seriously. The Deputy Commissioner (CT)s may inform the details of the above instructions to the Chamber and Trade association in their jurisdiction and give them copies of this circular. Thus, it is evident that even though such a statutory provision is available to verify the premises of the person for registering the certificate, the circular clearly states that such places need not be inspected and registration certificate shall be issued within a period of one week after satisfaction. Thus, the charge No. 1 framed for violating the Rule 24(8) of the Rules is unsustainable as the same is diluted through the circular dated 17.02.2000 and the consequential punishment imposed is also unsustainable.

9. Insofar as the Charge No. 4, i.e. the issuance of "C" Forms is concerned, the matter in issue is no longer res integra, when a dealer is having the registration certificate, the Petitioner is bound to issue "C" Forms in terms of the Division Bench judgment dated 27.04.1971 made in W.P. Nos. 1379 and 1380 of 1967 and 840 of 1971 and the said judgment was followed by the learned Single Judge. In the decision reported in 1986 STC 335, in paragraph Nos. 2 and 3, it is held as follows:

2. The short question for consideration is, whether the Petitioner, who has registered itself, under the provisions of the Central Sales Tax Act, is entitled to the supply of C forms and declarations, on request for the supply of such forms being made or whether the Respondent is entitled to refuse to supply such forms on the ground that the materials to be bought from other States by use of such forms, would be utilised, in works contracts or defer the issue of such forms on the ground that a thorough investigation is to be made regarding the nature of the transaction carried on by the Petitioner.

3. An identical question came up for consideration before a Bench of this Court in W.P. Nos. 1379 and 1380 of 1967 and 840 of 1971 (T.V.P. Nambiar v. State of Madras) and by order dated 27th April 1971, the Bench held as follows:

We are of the view that the petition is well-founded. There is no provision in the Act which authorised the Commercial Tax Officer to refuse to provide the Assessee with C forms. If the Assessee misused the C form, that will be punishable u/s 10 of the Central Act. Beyond that, it had not effect, not even in tax. The Commercial Tax Officer was not constituted as a policeman regulate and conduct the Assessee along with virtuous path. If the Assessee had registered himself under the provisions of the Central Act, he was, as a matter of right, entitled to get C forms from the Officer, who had no authority to refuse the same. The petition is therefore allowed with

costs.

Following the ratio contained in the said judgment, which is on all fours to the present case, the Writ petition will stand allowed and there will be a rule to the Respondent as prayed for in the petition. The C forms and other statutory terms and declarations will be supplied to the Petitioner within three weeks from the date of receipt of this order.

Thus the Petitioner cannot be blamed for issuance of "C" Forms to the dealer. Since the charges 1 and 4 are not established and charges 2 and 3 having not found proved, even according to the Respondents, not only during the enquiry, which was also accepted by the disciplinary authority, charge No. 5 cannot be also proved. The initiation of the proceedings against the Petitioner insofar as charges 1, 4 and 5 are therefore not justified and consequential punishment imposed confirmed in appeal is also liable to be set aside. Accordingly, the Writ Petition is allowed and the punishment order passed by the second Respondent in Proc. No. No. CD2/30172/2005 dated 30.07.2008 and as confirmed in the order passed by the first Respondent in G.O.(D) No. 241 Commercial Taxes and Registration (A1) Department dated 20.05.2009 are set aside. No costs. Consequently connected Miscellaneous Petition is closed.