

Ranjit Impex

v.

Appellate Deputy Commissioner & Another

(Supreme Court Of India)

HON'BLE MR. JUSTICE ANIL R. DAVE HON'BLE MR. JUSTICE DIPAK MISRA

Civil Appeal No. 7809 Of 2013 (Special Leave Petition (Civil) No. 27073 Of 2011) | 03-09-2013

Leave granted.

2. The present appeal by special leave is directed against the judgment and order dated 24.06.2011 passed by the High Court of Judicature at Madras in W.A. No. 730 of 2011 wherein the Division Bench declined to interfere with the judgment and order dated 17.02.2011 passed by the learned Single Judge in W.P. No. 2974 of 2011.

3. The factual narration would exposit that the appellant herein preferred an appeal before the Deputy Commissioner-I, Commercial Taxes and at the time of presentation, a sum of Rs.8,52,472/- was required to be deposited as per the calculation made under Section 51 of the Tamil Nadu Value Added Tax Act, 2006 (for brevity 'the Act') but as it was not done, the Memorandum of Appeal was returned to him. The learned Single Judge disposed of the writ petition directing the assessee to comply with all the requirements as intimated by the appellate authority in the Return Memo dated 3.1.2011 and on such compliance, the appellate authority was directed to register the appeal and dispose of the same in accordance with the law.

4. In the Writ Appeal, it was contended that the appellate authority could not have returned the Memorandum of Appeal on the ground that Section 51 uses the term "entertain" and second, the amount that was due to the appellant from the department was to be adjusted for the purpose of deposit as envisaged under Section 51 of the Act. The Division Bench came to hold that the proof of deposit of tax has to be produced at the time when the appeal is taken for consideration but not at the time of presentation of appeal. As far as issue of adjustment is concerned, it is objected that the amount had properly been adjusted.

5. As far as the first issue is concerned, it is needless to say that the conclusion arrived at by the Division Bench is absolutely justified, for a condition to entertain an appeal does not mean that the Memorandum of Appeal shall be returned because of such non-compliance pertaining to pre-deposit. The only consequences that the appeal shall not be entertained

which means the appeal shall not be considered on merits and eventually has to be dismissed on that ground.

6. As far as the adjustment is concerned, learned counsel for the appellant submitted that the adjustment has not been appositely done. In course of hearing, a suggestion was given that the assessee should deposit the amount demanded by the first appellate authority under Section 51 of the Act and the cavil over proper adjustment should be agitated in a proper proceeding before the authorities.

7. Learned counsel for the assessee accepting the said decision submitted that in that event the finding recorded by the Division Bench to the effect that there had been proper adjustment should be set aside. Having heard the learned counsel for the assessee and learned counsel for the revenue, we are inclined to direct that the appellant shall deposit the amount as required by the Deputy Commissioner-I, Commercial Taxes vide order dated 6.1.2011 by 30th September, 2013 whereafter the appeal shall be heard and disposed of on merits. As far as the adjustment/refund is concerned, it is open to the appellant to initiate any independent proceeding. The conclusion of the Division Bench with regard to the factum that there has been proper adjustment by the Department in respect of the claim made by the assessee is set aside. However, we may proceed to clarify that we have not expressed any opinion with regard to the claim of the assessee.

8. In the result, the appeal is allowed in part and the order passed by the Division Bench is modified accordingly. There shall be no order as to costs.