(2007) 03 MAD CK 0150

In the Madras High Court

Case No : Writ Petition No''s. 7784 and 7785 of 2007

Amutha Metals APPELLANT

Vs

The Commercial Tax Officer RESPONDENT

Date of Decision : 02-03-2007

Acts Referred:

Citation : (2007) 9 VST 478

Hon'ble Judges : K. Raviraja Pandian, J

Bench : Single Bench

Advocate : R. Mahadevan, for the Appellant; Haji Nazirudeen, Spl. G.P. (Taxes), for the Respondent

Final Decision : Allowed

Judgement

K. Raviraja Pandian, J.—The writ petition in W.P. No. 7784 and 7785 of 2007 has been filed seeking the relief of issuance of a writ of certiorari to call for the records of the respondent in his proceedings in TNGST/1240955/2003-04, quash the assessment order dated 22.12.2005 made therein.

2. The writ petition in W.P. No. 7785 of 2007 has been filed seeking the relief of issuance of a writ of certiorari to call for the records of the respondent in his proceedings in TNGST/1240955/2001-02, quash the assessment order dated 28.9.2004 made therein.

3. I heard the argument of the Learned Counsel appearing on either side and perused the materials on record.

4. The orders of assessment are put in issue in these writ petitions. this Court seldom interferes with the orders of assessment as there is an appellate remedy available under the statute itself. But this Court intends to interfere with the present assessment orders on the ground that there is a manifestation of carelessness and callousness with which the assessment orders have been passed.

5. In these two cases, it is accepted by the assessing officer that for a pre-revision notice, the petitioner has given objections. The objections have to be considered by the assessing officer on its own merits. However, the assessing officer proceeded to the effect that

... Their objections were examined in detail. The dealers should have placed all the facts before the inspecting Officials. But they did not do so. They had given an admitted statement to the effect that the purchases were made from unregistered dealers and sold and that they were not in a position to produce purchase bills. In as much as they had admitted and even tax paid to some extent as per their statement now I find no reason to deviate from the proposals.

6. If the reasoning stated by the enforcement officials is taken as correct reason, there is no need for the assessing officer to be there to frame the assessment. The Enforcement Wing officials themselves would have framed the assessment. Under the statutory provisions, it is expected from the assessing officer to consider the objections and either accept or reject the same by giving valid reasons by applying his mind. The above extract of the reasoning given by the assessing officer is nothing than desperation to pass an order on the basis of D3 proposal. There are ever so many cases where D3 proposals have been deviated by the assessing officer after applying their mind. Hence, this Court is of the view that the assessment orders are passed without considering the objections and by taking note of the D3 proposal of the enforcement officers. Therefore, the orders of assessment have to be set aside and the same are set aside. The assessing officer is directed to consider each one of the objections raised by the petitioners and give reason, except the reason that they have admitted before the Enforcement Officer and given statement before them with reference to the material made available and with reference to their accounts.

7. Hence, in both the writ petitions, the impugned orders are set aside and the matters are remitted back to the assessing authority to re-frame the assessment in accordance with the law.

8. Accordingly, the writ petitions are allowed. However, there is no order as to costs. Consequently, the connected M.Ps are closed.

