(2008) 06 MAD CK 0113

In the Madras High Court

Case No : Writ Petition No. 2141 of 2006 and W.P.M.P. No. 2420 of 2006

A.V.M. Textiles APPELLANT

Vs

Commercial Tax Officer RESPONDENT

Date of Decision : 19-06-2008

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2008) 16 VST 7

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : R. Senniappan, for the Appellant; J. Ganesan, Government Advocate (T), for the Respondent

Judgement

S. Nagamuthu, J.—Though the miscellaneous petition is listed today, by consent of both sides, the writ petition itself is taken up for final disposal.

2. The respondent issued a show-cause notice to the petitioner calling upon him as to why sales tax to the tune of Rs. 33,926 with penalty of Rs. 50,890 should not be imposed on the petitioner under the provisions of the Tamil Nadu General Sales Tax Act, 1959. For the said notice, it is stated by the petitioner that he had submitted a reply on August 22, 2005. Thereafter, the respondent has passed an order by his proceedings in D3. No. 01/2005-06 dated November 30, 2005, thereby, confirming the proposal and determining the tax at Rs. 33,926 with penalty of Rs. 50,890. The said order dated November 30, 2005 is under challenge in this writ petition.

3. It is contended by the learned Counsel for the petitioner that though the objection was submitted by the petitioner for the show-cause notice as early as on August 22, 2005, the respondent has not considered the objections raised by the petitioner. The learned Counsel would take me through the impugned order, wherein, it has been recorded as follows:

Accordingly, a notice was issued to the dealer calling for his objection, if any, on the above proposal. The dealer had not filed any objection so far. Hence, I confirm the above proposal and pass orders as below:

Total and taxable turnover determined : Rs. 8,48,160 Tax due : Rs. 33,926 Tax paid : Rs. nil Balance : Rs. 33,926 A notice in form B3 is issued. Penalty : Penalty due : Rs. 50,890 Penalty paid : Rs. nil Balance : Rs. 50,890

4. A perusal of the counter would go to show that the respondent has tacitly admitted that reply to the notice was given by the petitioner on August 22, 2005. When that be so, in my considered opinion, the order of the respondent is patently erroneous.

5. The learned Counsel appearing for the respondent would however oppose the writ petition stating that the order under challenge is appealable and since the petitioner has got an alternative and efficacious remedy to appeal, he is not entitled to maintain this writ petition before this Court.

6. Per contra, the learned Counsel for the petitioner would rely on a judgment of this Court in V. George Vincent v. Deputy Commercial Tax Officer [2008] 14 VST 60 wherein, in a similar case, this Court has held that before passing any such order, the authority is to provide the dealer with copies of all documents relied upon and grant opportunity to the dealer to challenge the same.

7. In this case, a perusal of the reply to the notice submitted by the petitioner would go to show that the petitioner has requested the respondent to furnish copies of the bills on which basis it is proposed to conclude that the petitioner went on purchasing materials, though according to him, the business was closed long before. Admittedly, the copies as requested by the petitioner were also not given. Thus in my considered opinion, though the petitioner has got an appeal remedy, since the impugned order has been passed in violation of the principles of natural justice, this Court has to necessarily exercise its jurisdiction under article 226 of the Constitution of India to set aside the order.

8. In view of the above, without going into the other merits of the case, this writ petition is allowed and the impugned order is set aside and the matter is remitted back to the respondent for fresh disposal strictly in accordance with law. Before passing any final order of determination, the respondent is directed to furnish the copies of the documents relied on by the respondent and also to afford sufficient opportunity to the petitioner to submit his objections. No costs.

9. Consequently, connected miscellaneous petition is closed.