(2016) 01 MAD CK 0069

In the Madras High Court

Case No : W.P. Nos. 38915 to 38917 of 2015

Basheera Hardwares and Electricals APPELLANT

Vs

The Assistant Commissioner (CT), Ambattur Assessment Circle and Others RESPONDENT

Date of Decision : 04-01-2016

Acts Referred:
Tamil Nadu Value Added Tax Act, 2006 — Section 22(5), Section 72(1)(a)

Citation : (2016) 01 MAD CK 0069

Hon'ble Judges : R. Mahadevan, J.

Bench : Single Bench

Advocate : A.P. Srinivas, for the Appellant; S. Manoharan Sundaram, Addl. Govt. Pleader (T), for the Respondent

Final Decision : Disposed Off

Judgement

R. Mahadevan, J.—1. Heard the learned counsel for the petitioner and the learned Additional Govt. Pleader (Taxes), who took notice for the respondent and with their consent, these writ petitions are taken up for disposal.

2. The petitioner has come forward with these writ petitions challenging the impugned orders passed by the 1st respondent in TIN 33181362988/2012-2013, 2013-2014 and Rc. No. 1047/2015/A4 respectively on 14.10.2015.

3. The petitioner is a registered dealer engaged in the business of selling Asian Paints and other incidental goods. As the petitioner''s husband died, she surrendered the registration certificate on 01.04.2014. In the family arrangement, the business was allotted to her son Shaddiq Basha and he took a new registration on 10.4.2014 and doing the business in the same name and style under the TIN number 33101370598.

4. For the assessment years 2012-2013 and 2013-2014, pre assessment notices dated 6.8.2015 in respect of Tin No. 33181362988 were issued by the first respondent stating that there was difference in the amounts specified as

purchase turn over from the registered dealers and the same was treated as sales suppression and tax was arrived at 14.5% respectively and also levied penalty under section 22(5) of the TNVAT Act. For the assessment year 2014-2015, the 1st respondent issued a notice dated 17.08.2015 stating that the petitioner after closing down the business, purchased goods for a turnover of Rs. 1,61,85,362/- by using the cancelled TIN number and hence the sales suppression was arrived at Rs. 1,78,03,898/- and after adding gross profit at 10%, it was proposed to be taxed at 14.5%. It was further stated in the notice that since the petitioner has committed an offence in order to evade tax, compounding fee was levied under section 72(1)(a) of the Tamil Nadu Value Added Tax Act, 2006. The petitioner filed reply dated 9.9.2015 to the first respondent explaining as to how the mistake has happened and submitted that the said difference turnover was admitted by the seller and the said turnover was already tax suffered and the respondent can make further enquiry with the 2nd respondent who is the assessing officer of the seller/supplier. But without considering the same, the impugned orders came to be passed by the 1st respondent. Hence these present Writs Petitions came to be filed.

5. Learned counsel for the petitioner submitted that the replies given by the petitioner dated 9.9.2015 was not considered by the first respondent and the petitioner was not given sufficient opportunity of hearing to put forth their case. He further submitted that when the mistake is committed by the selling dealer and the same was admitted by him, then it is the responsibility of the assessing officer to verify the same, but without doing so, the impugned orders came to be passed which is in gross violation of principles of natural justice. Thus he prayed for allowing of these writ petitions.

6. After notice, the learned Additional Government Pleader (Taxes) produced a communication dated 14.12.2015 in Tin. No. 33181362988/2012-13, wherein, it is observed as follows;

"In this regard, it is submitted that, correctness of the above details are to be verified based on the Annexure-I of the above 3 dealers and hence, it is requested that, the above cases may kindly be got remanded back for verification and re-assessment."

7. The above referred communication is recorded. In view of the above, the impugned orders are set aside and the matters are remanded back to the assessing authority for passing orders afresh, after affording due opportunity of being heard to the petitioner. The petitioner is directed to appear before the assessing officer in person and produce all the required documents and particulars as sought for by the 1st respondent, within a period of two weeks from the date of receipt of a copy of this order. On such production, the same shall be considered by the 1st respondent and necessary orders be passed on merits and in accordance with law within a period of six weeks thereafter.

8. With the above direction, these writ petitions are disposed of. No costs.

Consequently, the connected miscellaneous petitions are closed.

