(2008) 10 MAD CK 0132

In the Madras High Court

Case No : Writ Petition No. 22969 of 2008 and M.P. No''s. 1 and 2 of 2008

Champion Plastics (India) Pvt. Ltd. — APPELLANT

Vs

Commercial Tax Officer — RESPONDENT

Date of Decision : 28-10-2008

Acts Referred:

Tamil Nadu General Sales Tax Rules, 1959 — Rule 32(5), 52, 52(1)

Citation : (2010) 28 VST 463

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : N. Sriprakash, for the Appellant; J. Ganesan, Government Advocate, for the Respondent

Judgement

P. Jyothimani, J.—Heard the learned Counsel for the petitioner and the learned Government Advocate, who has made submissions on instructions and submitted the records also.

2. This writ petition is directed against the impugned revised assessment order passed by the respondent dated June 24, 2008 in respect of the original assessment passed for the year 2001-02.

3. It is the case of the petitioner that under the Tamil Nadu General Sales Tax Act, the original assessment was passed for the year 2001-02 by the Deputy Commercial Tax Officer on May 5, 2004 and that was after inspection which was stated to have been conducted on March 27, 2004. The petitioner has received the impugned revisional assessment order passed by the respondent dated June 24, 2008 on August 20, 2008. The case of the petitioner is that while revisional authority, the respondent is not in dispute, the petitioner has not been served with notice by the respondent while bringing the revisional assessment order as per the relevant rules.

4. The learned Counsel for the petitioner would rely upon the previous provisions of the Tamil Nadu General Sales Tax Rules, 1959. Rule 32(5) of the Rules which

speaks about the communication of any order. As per the rule, the following method is prescribed:

An order to be communicated under this rule may be communicated:

(1) by service on the person concerned or his authorised representative; or

(2) by registered post acknowledgement due; or

(3) by affixture at the last known place of business or residence, if service by the first two methods is not possible.

5. Rule 52(1) which speaks about the service of the notices generally, prescribes four modes of service. Rule 52(1) runs as follows:

52. Service of notices.-(1) The service on a dealer of any notice, summons or order under the Act or these Rules may be effected in any of the following ways, namely:

(a) by giving or tendering it to such dealer or his manager or agent or the legal practitioner appointed to represent him or to his authorised representative;

Explanation.-Endorsement by person who delivers the notice, etc., of having tendered or given it will be proof for the purpose of this sub-rule.

(b) if such dealer or his manager or agent or the legal practitioner appointed to represent him or his authorised representative is not found, by giving or tendering it to any adult member of his family;

(c) if the address of such dealer is known to the assessing authority, by sending it to him by registered post; or

(d) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence.

6. A reference to the modes of communication as well as the modes of service of notices under the Rules makes it clear that the notices are to be served either to the dealer or his manager, which means any person or if such manager or agent, etc., are not found by tendering it to one of the adult members of the family and in the event that such service is not possible, by sending it to the address of the dealer by registered post and thereafter if no one of the three procedures is possible, then by affixture.

7. The learned Counsel for the respondent says that notice in respect of revision dated March 25, 2008 was sent to the assessee by ordinary post. The records submitted by the learned Counsel for the respondent also confirm the said submission, that it was sent only by ordinary post and not by registered post. Even endorsement in respect of the factum of sending of the notice by ordinary post has been made by one of the clerks in the office of the respondent. Therefore, on the factual matrix that the notice of revision to the assessee was sent not by one of the modes prescribed under the Rules especially Rule 52, the

impugned revision has to be set aside.

8. In view of the same, the impugned order of revision of assessment made by the respondent dated June 24, 2008 is set aside and the matter is remitted to the respondent for taking appropriate steps in accordance with the rules and pass orders.

9. The writ petition is disposed of on the above terms. No costs. Consequently, connected miscellaneous petition is closed.