(2006) 07 MAD CK 0219

In the Madras High Court

Case No : Writ Petition No. 21350 of 2006 and M.P. No. 1 of 2006

Chemech Laboratories Limited APPELLANT

Vs

Commercial Tax Officer RESPONDENT

Date of Decision : 17-07-2006

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 12(3)

Citation : (2009) 20 VST 471

Hon'ble Judges : K. Raviraja Pandian, J

Bench : Single Bench

Advocate : P. Rajkumar, for the Appellant; M. Udayakumar, for the Respondent

Judgement

K. Raviraja Pandian, J.—The writ petition is filed by the petitioner seeking for the relief of issuance of writ of certiorarified mandamus to call for the records of the respondent in TNGST No. 1421877/2004-05 and quash the impugned order dated May 19, 2006 and further direct the respondent to pass a fresh assessment order after considering the objections dated April 21, 2006 and the details filed along with the objections dated April 21, 2006.

2. In spite of repeated cautions made by this Court as to the nature of the assessment framed by the assessing officers, the callousness with which the assessments are made has not stopped. The impugned assessment order is yet another example for the same.

3. For the assessment year 2004-05, the assessing officer has issued proposal notice to the petitioner on April 5, 2006. Subsequently, on April 7, 2006, a revised notice has also been issued. In both the notices, the asses-sees were called upon to file their objections, if any, to the proposal.

4. It is the case of the petitioner/assessee that on receipt of the notice by the petitioner, as required in the notice, objections dated April 20/21, 2006 have been delivered to the respondent, but however in the assessment order dated May 19, 2006, it is stated by the assessing officer that a notice was issued to the

dealer on April 7, 2006 calling for objections to the above proposal. The dealer has received the notice on April 11, 2006 and raised no objection till date. Thus confirmed the proposal and levied tax in a sum of Rs. 21,88,453 as against the tax paid by the assessee in a sum of Rs. 1,61,916 and surcharge in a sum of Rs. 1,09,404 as against a sum of Rs. 1,292 paid by the assessee and thus the assessing officer has come to the conclusion that there is a balance of Rs. 20,26,537 towards tax and Rs. 1,08,112 towards surcharge. Not stopping with that, the assessing officer has also imposed a penalty u/s 12(3)(b) of the Tamil Nadu General Sales Tax Act, 1959 at 150 per cent both for the tax as well as the surcharge in a sum of Rs. 32,03,912. That order is now challenged before this Court on the ground that the entire process of framing the assessment is against the statutory provisions. The objections filed by the petitioner and received by the assessing officer have not at all been taken into consideration and the assessment has been framed as if no objections have been filed, which is factually incorrect.

5. In order to verify the correctness of the statement made in the affidavit filed by the petitioner and argued by the counsel, this Court directed the Government Pleader to produce the assessment file before this Court.

6. The learned Government Pleader produced the assessment file, wherein the objections of the petitioner which is dated April 20, 2006 is very much available at page No. 191 of the file. It is also crucial to note that the date of receipt has also been incorporated by the respondent by their own seal on April 20, 2006 thereby indicating that the objections have been received by the office of the Commercial Tax Officer, Saligramam Assessment Circle, the respondent herein.

7. In order to prove that this document has been handed over to the respondent, the learned Counsel appearing for the respondent has also annexed in the typed set of papers filed along with the writ petition the delivery note. Now that the very document of objections itself is available at page No. 191 of the assessment file with the seal of the respondent, we need not take any support from the outside materials.

8. It is seen from the records that the objections have been received by the respondent on April 20, 2006 and the final assessment has been made on May 19, 2006. However, while making the assessment, the assessing officer, for obvious reasons, had not taken minimum pain of looking into the objections raised by the assessee and answered the same and framed the assessment. He thought of a novel method of brushing aside the objections by stating that the assessee has not filed objections at all to the show-cause notice, which is a blatant lie and against the factual material available on record.

9. The statute gives power to the statutory authority like the assessing officer to frame the assessment in accordance with law only and any assessment made by the assessing officer is quasi-judicial in nature and it must stand to the scrutiny and correctness before the court of law. The authorities cannot pass an order at

their whims and fancies. Above all, in this case, as seen from the assessment order, the assessment order has been framed after scrutinising the day book, ledger, purchase and sale bills, etc. It is not as if the accounts were not produced and best judgment has been framed against the petitioner. This court is not able to assimilate as to why the assessing officer has not even taken minimum pain of looking into the objections raised by the petitioner for the proposal notice and pass appropriate orders. In the absence of any other answer, the one and only conclusion is, the total perversity on the part of the respondent-assessing officer. Because of his whimsical and laconic order, a huge amount of Rs. 60 lakhs has been thrust upon the assessee, which is unwarranted and uncalled for. Such assessment made the petitioner to rush up to this Court by filing the writ petition, but for a cavalier act of the respondent-assessing officer, a fair and reasonable assessment would have been passed based on the materials on record and this sort of approaching this Court by exercising the extraordinary jurisdiction would have been averted by the petitioner. Hence, I am of the view that mere setting aside and sending back the matter to the assessing officer would not serve the purpose. The assessing officer should be pointed out to his place by this Court. However, the learned Government Pleader very fervently requested that no adverse remark need be passed against the assessing officer and he would properly advise the assessing officer to perform his function in accordance with the statute.

10. Taking the law officer''s word that the assessing officer would follow the due process of law atleast in future, the impugned order is set aside and the matter is remitted back to the authority to consider the objections filed by the petitioner on April 20, 2006 and proceed further in accordance with law.

11. With this observation, the writ petition is disposed of. The assessing officer is directed to pay a sum of Rs. 3,000 to the assessee, which shall be paid within a period of ten days from today from his own pocket and not from the tax-payer money.

12. However, after passing the above order, the learned Counsel appearing for the petitioner submits that the petitioner will have to face the assessing officer everyday and such imposition of fine would cause unnecessary hardship to him.

13. Accepting the said submission, the respondent-assessing officer is hereby directed to pay the costs of Rs. 3,000 from out of his own pocket to the legal service authority within a period of ten days from today.