(2012) 06 MAD CK 0214

In the Madras High Court

Case No : Writ Petition No. 15644 of 2012 and M.P. No. 1 of 2012

D.P. Mahesh APPELLANT

Vs

Assistant Commissioner (CT) (Addl.) RESPONDENT

Date of Decision : 27-06-2012

Acts Referred:

Citation : (2013) 58 VST 434

Hon'ble Judges : P.P.S. Janarthanaraja, J

Bench : Single Bench

Advocate : R. Vasumithran for N. Inbarajan, for the Appellant; A.R. Jayaprathap, Government Advocate (Taxes), for the Respondent

Final Decision : Allowed

Judgement

P.P.S. Janarthanaraja, J.—With the consent of both sides, the writ petition itself is taken up for final disposal at the admission stage. The petitioner has filed the above writ petition seeking to issue a writ of certiorarified mandamus to call for the records on the files of the respondent herein in Assessment No. TNGST. 0922304/2005-06 dated May 18, 2012, quash the same and direct the respondent to consider the objections dated December 28, 2008 and December 30, 2008 (acknowledged on January 2, 2009).

2. The petitioner is a registered dealer on the files of the respondent and engaged in undertaking contracts with Government Corporations and Government Departments. The petitioner is mainly carrying on the civil works or repair, maintenance, upgradation of earlier construction by means of working out-re-painting, re-polishing of the floors, ceiling and carrying out certain repair work in carpentry, plumbing and sanitary work and tiling. The petitioner has purchased the goods locally, which are used in the work order executed by him as per the contract. On March 27, 2007, the petitioner has produced profit and loss account, balance sheet, computation of sales tax along with copy of form XXXVII-A certificates (15 numbers). After verification of the same, the respondent has issued notice dated June 11, 2008 calling for explanation with regard to the

accounts and the details produced by him. The petitioner has filed objection and other details on June 20, 2008 along with explanation to the respondent. But on December 4, 2008, the respondent has issued notice stating that he has hot filed a copy of the contract, based on which the nature of work and material used can be verified. The petitioner filed his objections dated December 28, 2008 and December 30, 2008 elaborately with the details of the purchase of the materials used in the work orders. Thereafter, again on October 7, 2010, a notice was issued to the petitioner by the subsequent assessing authority, for which, the petitioner requested further time to produce further details. Without giving time, suddenly the respondent has passed the assessment order on May 18, 2012. Challenging the same, the petitioner has filed the above writ petition.

3. The learned counsel appearing for the petitioner vehemently contended that the petitioner filed his objections dated December 28, 2008 and December 30, 2008 elaborately with the details of the purchase of the materials used in the work orders to the notice issued on December 4, 2008. Without considering the same, the respondent passed the impugned assessment order stating that the petitioner has not replied to the notice dated October 30, 2008. But, no such notice was sent to the petitioner. Hence, the impugned order passed by the respondent is not in accordance with law and seeks to quash the impugned orders.

4. The learned Government Advocate (writs) appearing for the respondent submitted that number of opportunities were given to the petitioner to substantiate his case, but the petitioner has not taken any steps and hence, the impugned order passed by the respondent is in accordance with law and sought for dismissal of the writ petition.

5. Heard the learned counsel appearing on either side and perused the materials available on record. In the assessment order, it is stated that the respondent has sent notice dated October 30, 2008, for which, the petitioner has not sent any objection. But on verification of the files, it is noted that no such notice was sent by the respondent whereas the petitioner has sent objections dated December 28, 2008 and December 30, 2008 elaborately with the details of the purchase of the materials used in the work orders to the notice issued on December 4, 2008. But without considering the same, the respondent has passed the impugned assessment order, which amounts to violation of the principles of natural justice. Considering the facts and circumstances of the case and in the interest of justice, the impugned, assessment order dated May 18, 2012 is quashed with a direction to the respondent to consider the matter afresh after giving opportunity to the petitioner to substantiate their claim and pass order in accordance with law as expeditiously as possible, preferably within a period of six weeks from the date of receipt of a copy of this order after considering the objections dated December 28, 2008 and December 30, 2008. Accordingly, the writ petition is allowed. No costs. Consequently connected miscellaneous petition is closed.