(2014) 10 MAD CK 0078

In the Madras High Court

Case No : Writ Petition Nos. 28374 to 28377 of 2014 and M.P. No. 1 of 2014 (4 cases)

Global Calcium Private Limited APPELLANT

Vs

The Assistant Commissioner RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:
Tamil Nadu Value Added Tax Act, 2006 — Section 27, 27(2), 27(4)

Citation : (2014) 10 MAD CK 0078

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Judgement

T.S. Sivagnanam, J.—In all these writ petitions, the petitioner, who is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and Central Sales Act, 1956, has challenged the orders of the assessment passed by the first respondent, under the Tamil Nadu Value Added Tax Act, for the assessment years 2009-10, 2010-11, 2011-12 and 2012-13.

2. The only ground, on which the impugned orders of assessment have been challenged, is that the petitioner has not been afforded adequate opportunity to put forth their submissions stating that the proposal to reverse the ITC availed is incorrect. In this regard, the learned counsel appearing for the petitioner placed reliance on Section 27(2) of the TNVAT Act and submitted that the phrase used in the said provision is reasonable opportunity and reasonable opportunity should be a meaningful opportunity and when the petitioner requested time even before the expiry of 15th day, the authority has passed orders for all four assessment years.

3. Heard the learned Additional Government Pleader on the above submissions.

4. The first respondent issued notice dated 12.09.2014 proposing to reverse ITC as per Section 27(2) of TNVAT Act and apart from, proposing to levy penalty at 50% as per Section 27(4) of TNVAT Act. The petitioner, by representation dated

29.09.2014, submitted that they have received the revision notice on 16.09.2014 and proposal has been made without taking into consideration of adjustment of ITC towards future demands and they are arriving at the details of adjustment of ITC for every month and as it would take some time to gather all details, the petitioner requested 30 days time to file their detailed objections to the proposed revision. The request for adjournment was received by the first respondent on 30.09.2014. However, on the same day, the impugned orders of assessment have been passed.

5. Under normal circumstances, in case where request for adjournment is made, it is open to the authority to accept or reject the same, however, while rejecting the same, the authority should bear in mind the provisions, namely, Section 27(2) of TNVAT Act, more particularly, the proviso under the said sub-section which provides that no order shall be passed under Sub-sections (1) and (2) of Section 27 without giving the dealer a reasonable opportunity of showing cause against the said order. Therefore, even while rejecting the request, the authority should bear in mind the expression used in the proviso, namely, reasonable opportunity. Therefore, in the instant case, the petitioner had stated that the proposal to reverse the ITC has been made without taking into consideration of adjustment of ITC towards future demands and that they wanted 30 days'' time since they were collecting the details of adjustment of ITC. Therefore, the first respondent ought to have examined the issue in a more objective manner and should have taken note of the fact that opportunity to the Assessee should be a meaningful opportunity and it is not for the sake of mere satisfying or compliance of the statutory requirement. That apart, when the petitioner made a request for grant of 30 days'' time, if the authority was not inclined to accept the request, then a separate order ought to have been passed prior to finalizing the assessment. Even in such a case, the Assessee should have been afforded an opportunity of personal hearing. Since all these above procedural illegalities have crept in, the impugned orders are liable to be quashed.

6. Accordingly, these writ petitions are allowed and the impugned orders are set aside. The petitioner is directed to submit their objections within 15 days from the date of receipt of a copy of this order along with the documents in support of their claim. The first respondent shall afford an opportunity of personal hearing to the petitioner and pass a reasoned order, on merits and in accordance with law, within a period of 30 days from the date on which the personal hearing is concluded. No costs. Consequently, connected miscellaneous petitions are closed.