(2014) 11 MAD CK 0414

In the Madras High Court

Case No : Writ Petition Nos. 29540 to 29543 of 2014 and M.P. Nos. 1,1,1 and 1 of 2014

Herbal Supplements Pvt. Ltd. APPELLANT

Vs

The Commercial Tax Officer RESPONDENT

Date of Decision : 13-11-2014

Acts Referred:
Tamil Nadu Value Added Tax Act, 2006 — Section 22(2), 22(4), 25

Citation : (2014) 11 MAD CK 0414

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

Bench : Single Bench

Judgement

T.S. Sivagnanam, J.—In all the four writ petitions, the petitioner, who is the registered dealer under the provisions of the Tamil Nadu Value Added Tax Act has challenged the orders of the assessment for the years 2009-2010, 2010-11, 2011-12 and 2012-13. The petitioner was issued notice on 26.6.2014 for all four assessment years stating that on verification of the returns filed and several defects were found. Therefore, the Assessment Officer proposed to reject the returns filed by the petitioner as incorrect and incomplete and to finally determine the total taxable turnover to the list of its judgment under Section 22(4) of the Tamil Nadu VAT Act and the petitioner was directed to file written objections as against the proposals with recorded proof in support and was also given an opportunity for personal hearing as provided under Section 22(4) of the Tamil Nadu VAT Act 2006 and directed the petitioner to appear in person or through an Authorised Representative before the under-signed on 23.06.2014. Thereafter, the petitioner filed objections on 27.8.2014 raising various contentions on facts and requested to drop further proceedings. Subsequently, the petitioner requested for adjournment for the personal hearing fixed by the authority. The request made by the petitioner was accepted and the personal hearing was adjourned. Even on the adjourned date, the petitioner did not appear before the authority. Therefore, the authority proceeded on the basis of the written objections and confirmed the proposal given in the notice and has demanded the balance tax payable. Challenging the orders on demand, these writ petitions have been filed.

2. The learned senior counsel for the petitioner would submit that in terms of Section 22(2), the petitioner is deemed to have been assessed on 30.6.2012 and if at all, when the proceedings are re-opened invoking the power under Section 25 of Tamil Nadu Value Added Tax Act, the question of revision of assessment does not arise and it is without jurisdiction. However, it is submitted that opportunity of personal hearing is mandatory and the failure to afford an opportunity of personal hearing is illegal and contrary to the provisions of the Act and therefore, the petitioner, challenged the orders of assessment by way of all these writ petitions.

3. The learned Government Advocate appearing for the respondent has submitted that it is not a case on demand of assessment under Section 22(2). But, it is a case of best of judgment assessment under Section 22(2) and before doing it, the dealer was given an opportunity of being heard and the dealer though filed objections, did not appear in person and did not avail the opportunity. Therefore, he has submitted that the petitioner should be directed to file an appeal against the impugned orders of assessment.

4. Heard the learned senior counsel appearing for the petitioner and the learned Government Advocate appearing for the respondent and perused the materials placed on record.

5. The following issues have to be considered to dispose of these writ petitions:

(i) The first issue to be considered is as to whether the petitioner should be directed to challenge the assessment orders by filing appeal before the appellate authority.

(ii) The second issue to be considered is as to whether the petitioner was afforded reasonable opportunity of personal hearing before the impugned orders were passed and the action of the respondent is in violation of principles of natural justice.

6. Both the issues are inter connected. The facts of the case would reveal that the petitioner was afforded an opportunity and notice was issued under Section 22(4) of the TNVAT Act and the petitioner was also given an opportunity to file their objections and date was also fixed for personal hearing. The petitioner filed their objections, but, did not appear on the date fixed for personal hearing and the petitioner sought for adjournment on the ground that the sales tax practitioner was not available. The request made by the petitioner was accepted and the fresh date was assigned and even on that date also, the petitioner did not appear. Therefore, the authority proceeded to examine the objections and passed the impugned assessment orders. Therefore, it is not a case of violation of principles of natural of justice. But, it is a case where the petitioner failed to avail the opportunity granted. Therefore, on this ground, the petitioner cannot be

permitted to bypass the appellate remedy available under the Act. In such circumstances, the only remedy available to the petitioner as of now is to file appeals as against the impugned orders of assessment or if the petitioner is of the opinion that there are errors in the impugned assessment orders, then, it is open to them to invoke the powers under TNVAT Act seeking all their requirements. Hence, this Court is of the view that the petitioner shall not bypass the appellate remedy.

7. The contention raised by the learned senior counsel appearing for the petitioner before this Court that it is the case of deemed assessment under Section 22(2) and the question of revising such assessment by the authority does not arise .

8. Further, notices issued to the petitioner itself were under Section 22(4) of Act, wherein, the authority came to the conclusion that the returns filed by the petitioner were incomplete and incorrect. Therefore, before proceeding to assess the petitioner in best of its judgment, notices were issued. In such circumstances, the writ petitions held to be not maintainable and accordingly dismissed.

9. However, this will not stand in the way of the petitioner from filing appeals before the appellate authority under the provisions of the TNVAT Act. The Registry is directed to return the original impugned orders. No costs. Consequently, connected miscellaneous petitions are closed.