(2011) 09 MAD CK 0172

In the Madras High Court

Case No : Writ Petition (MD) No. 3070 of 2007 and M.P (MD) No. 1 of 2007

Jeya Engineering Works APPELLANT

Vs

The Commercial Tax Officer RESPONDENT

Date of Decision : 07-09-2011

Acts Referred:

Citation : (2011) 09 MAD CK 0172

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : M. Md. Ibrahim Ali, for the Appellant; D. Muruganandham, for the Respondent

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—The Petitioner has approached this Court with a prayer for issuance of a Writ in the nature of Certiorari, to quash the order of assessment passed by the Respondent, dated 03.02.2007 and served on the Petitioner on 19.02.2007.

2. The Petitioner has an alternative remedy of filing a statutory appeal, but in view the fact, that the Petitioner alleges violation of principle of natural justice, and that the writ petition was admitted in the year 2007, it would not be appropriate at this stage to relegate the Petitioner to the remedy of statutory appeal, specially when the facts are not disputed, by filing counter.

3. The Petitioner filed return for the assessment year 2004-2005, which was not accepted by the Commercial Tax Officer No. II, Tuticorin. The Respondent issued pre-assessment notice to the Petitioner on 16.10.2006 inviting objections. The Petitioner filed objections to the pre-assessment notice on 25.10.2006 which were duly received by the department on 25.10.2006 itself.

4. The Petitioner had also requested for an opportunity of personal hearing.

5. The Respondent without issuing any notice to the Petitioner passed the

impugned order by recording therein that the assesses has not filed any objections, to the proposed assessment.

6. The operative part of the impugned order reads as under:

Accordingly a notice was issued to the dealer inviting objections if any to the above proposed. The dealer received the notice and assessed not filed any objection so far. Hence the dealers was finally assessed for the year 2004-2005 as noted below;

Total turnover determined

Rs. 77,83,742.00

Exemption allowed

Rs. 30,20,565.00

Taxable turnover determined

Rs. 36,20,392.00

RST turnover determined

Rs. 11,42,785.00

Sales of machineries @ 5% against form XVII

Rs. 5,22,050.00 @ 3%

Ist sales of machineries as per accounts

Rs. 8,48,053.00 @ 12%

Ist Sales of machineries Form XVII not filed

Rs. 1,60,400.00 @ 12%

Exemption disallowed on labour charges

Rs. 19,61,777.00 @ 12%

Sales made to Government Departments & Certificate not produced

Rs. 44,112.00 @ 12%

Sales of Car

Rs. 84,000.00 @ 12%

Rs. 30,20,392.00

Tax

SC

RST

522050 @ 3%

15,662/-

783/-

3098342 @12%

3,71,801/-

8,590/-

1142785 @ 1%

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11,428/-

Tax Paid

3,87,463/-

19,373/-

11,428/-

1,23,465/-

5,125/-

12,286/-

2,63,998/-

14,248/-

858/-

Penalty U/s

12(3)(b)@68% @ 125%

Due

Rs. 3,47,807.00

paid Rs.

Nil

Balance

Rs. 3,47,807.00

Notice in for B3,UC & 54 will issue

7. The notice of this Writ was accepted by the Respondents in court, but, no counter has been filed disputing the facts referred to above nor it is disputed that

the objections were in fact received.

8. The impugned order therefore suffers from error apparent on the face of record, and is proved to have been passed in violation of the principles of natural justice, which cannot be sustained in law.

9. Consequently, the Writ Petition is allowed. The impugned order is set aside, and the case is remitted back to the Respondent to pass fresh order of assessment for the assessment year 2004-05, after taking into consideration the objections filed by the Petitioner and by giving opportunity of personal hearing to the Petitioner.

10. The Petitioner through his counsel is directed to appear before the Respondent on 13.10.2011 at 10.30 A.M.

11. Consequently, connected Miscellaneous Petition is closed.

12. No costs.

