(2010) 12 MAD CK 0081

In the Madras High Court

Case No : Writ Petition No. 23873 of 2010 and M.P. No. 1 of 2010

Joy Alukkas Traders (India) Pvt. Ltd. — APPELLANT

Vs

The Joint Commissioner (CT) and The Assistant Commissioner (CT) — RESPONDENT

Date of Decision : 07-12-2010

Acts Referred:

Citation : (2011) 183 ECR 244

Hon'ble Judges : M.M. Sundresh, J

Bench : Single Bench

Advocate : R. Senniappan, for the Appellant; Mahadevan, Addl. Govt. Pleader, for the Respondent

Judgement

M.M. Sundresh, J.—This Writ Petition has been filed by the Petitioner, challenging the order impugned dated 22.09.2010, passed by the

Respondents in R.P. No. 10 of 2010, on the only ground that inasmuch as the assessment year itself is over, the provisional assessment order

passed by the Authority cannot be sustained, more so, when the Petitioner has filed a returns in the prescribed form.

2. The learned Counsel appearing for the Petitioner submitted that the order impugned has been passed on 22.09.2010, making the provisional

assessment against the Petitioner/Assessee. The learned Counsel further submitted that when the assessment year itself is over, for the year 2009-

10, on 31.03.2010, the order impugned passed provisionally assessing the Petitioner cannot be sustained. In support of his contention, the learned

Counsel also relied upon the judgment reported in (1971) 28 S.T.C. 551 in the matter of (Mahendrakumar v. Ishwarlal and Co v. Deputy

Commercial Tax Officer, Tirupattur), which was followed later in the judgments reported in (1990) 79 S.T.C. 421 in the matter of (State of Tamil

Nadu v. Wander Ltd.,) and (2006) 143 S.T.C. 114 in the matter of (Nokia India Pvt., Ltd., v. Commercial Tax Officer, Chennai).

3. The position of law submitted by the learned Counsel appearing for the Petitioner has not been disputed by the learned Additional Government

Pleader appearing for the Respondents. The learned Government Pleader submitted that in the event of impugned orders passed by the

Respondents is being set aside by this Court, an opportunity may be given to the Respondents to pass final assessment orders.

4. In the judgment reported in (1971) 28 S.T.C. 551 (supra), while dealing with the provisions of Tamil Nadu General Sales Tax Act, 1959, this

Court was pleased to hold as follows:

This is a case in which I should straight away agree with the learned Counsel for the Petitioner. As to what prompted the Respondent to

solicitously write his memo., which he called a notice, after the year of assessment was over and when he was seized with the A-1 Form return

filed by the Petitioner voluntarily, I am not able to conjecture. There was no necessity for the officer to write this to the Assessee at all. Having

done so, the occasion for provisional assessment does not arise, because he had a return before him and he was obliged in law to assess on that

return after accepting it or rejecting it. He cannot assess provisional once the year is over and once when the return in the prescribed form is before

him for purposes of processing through the assessment. Surprisingly enough he threatens penalty for submitting an untrue return when a return is

already there in his file and which contain material on which he should act and decide as an assessing authority. If the materials before him and the

return filed by the Assessee are not acceptable for any other reason, he can act in any manner known to law including the levy of penalty as

provided under the Act. But the Respondent has no jurisdiction to say that he would provisionally assess in the circumstances of the case and

threaten the Assessee with penalty for having willfully submitted an untrue return. It is in this view of the matter, the rule nisiis made absolute and the

writ petition is allowed. The assessing authority is at liberty to proceed with the assessment on the basis of the return filed by the Petitioner and deal

with it in accordance with law

Similarly, while dealing with the very same provisions, under the very same enactment, which is also the subject matter of the present writ petition,

this Court, in W.P. Nos. 10781 to 10787 of 2008 dated 28.04.2008 in the matter of (Bio Veda Action Research Pvt., Ltd., Chennai-28 v.

Commercial Tax Officer, Adyar) has held as follows:

By consent of counsel for both sides, the below mentioned consent order is passed Already, the assessment year is over, hence, the provisional

assessment order passed by the Respondent, which are impugned in these Writ Petitions are set aside. The Respondent is directed to pass final

orders in the case of the Petitioners on merits and in accordance with law, within a period of two weeks from the date of receipt of a copy of this

order

Very recently, this Court vide order dated 27.06.2008, passed in W.P. Nos. 15233 and 15234 of 2008 in the matter of (M/s. Gagendra

Corporation, Coimbatore v. Commercial Tax Officer) has held as follows:

As the assessment year is over, already the provisional assessment order passed by the Respondent, which are impugned in these which are

impugned in these Writ Petitions are set aside. The second Respondent is directed to pass final orders in the case of the Petitioners on merits and

in accordance with law, within a period of two weeks from the date of receipt of a copy of this order

5. It is not in dispute that the orders passed on the earlier occasions by this Court have become final. Considering the fact that the assessment year

is already over, the provisional assessment orders passed by the Respondents are hereby set aside. Consequently, the Respondents are directed to

pass final orders of assessment in the case of the Petitioner on merits and in accordance with law within a period of eight weeks from the date of

receipt of a copy of this order. The Petitioner is also at liberty to place all the materials before the Assessing Officer, which has been raised in the

present Writ Petition.

6. Therefore, the Writ Petition is disposed of in the above said terms.Consequently, connected Miscellaneous Petition is closed.

However, there shall be no orders as to costs.

