(2015) 04 MAD CK 0273

In the Madras High Court

Case No : Writ Petition No. 9517 of 2015 and M.P. No. 1 of 2015

K.B. Hardwares APPELLANT

Vs

Commercial Tax Officer RESPONDENT

Date of Decision : 01-04-2015

Acts Referred:

Citation : (2015) 04 MAD CK 0273

Hon'ble Judges : S. Vaidyanathan, J

Bench : Single Bench

Advocate : S. Sathiyanarayanan, for the Appellant; Kanmani Annamalai, Additional Government Pleader (Tax), Advocates for the Respondent

Judgement

S. Vaidyanathan, J.

1. The petitioner has come forward with this writ petition to quash the proceedings of the respondent dated 06.02.2012.

2. The petitioner is a registered dealer under the TNVAT Act and is regular in submitting the returns. According to the petitioner, they received the impugned order dated 06.02.2015 determining a high turnover and stating that the petitioner was earlier served with notice dated 16.12.2014. But, the petitioner states that he was not aware of any such notice and subsequently it was realized that the notice has been served on an ex-employee of the company who had already left the service. He would further submit that he has all the required forms and records for the revised assessment to show that the petitioner is not liable to pay any tax. The petitioner, drew the attention of this Court to Rule 19 of the TNVAT Rules, which is extracted hereunder:

"Rule 19. Service of notices summons or orders.-(1) The service on a dealer of any notice, summon or order under the Act or these rules may be effected either electronically or manually in any of the following ways, namely:--

R.19 (1)(a) by giving or tendering it to such dealer or his manager or agent or the legal practitioner appointed to represent him or to his authorised representative; or

Explanation - Endorsement by person who delivers the notice, summon or order of having tendered or given will be proof for the purpose of this sub-rule.

R. 19(1)(b) if such dealer or his manager or agent or the legal practitioner appointed to represent him, or his authorized representative is not found, by giving or tendering it to any adult member of his family; or

R.19(1)(c) by sending it to the address of the dealer by registered post; or

R.19(1)(d) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence in the presence of two independent witnesses.

R.19(2) Where any Hindu Undivided Family, firm or other association of persons is partitioned, dissolved or discontinued, notice, summon or order issued under the Act or these rules may be served on any member of the Hindu Undivided Family, any person who was a partner (not being a minor) or member of the association, as the case may be, immediately before such partition, dissolution or discontinuance."

3. The learned Additional Government Pleader is unable to refute the contention of the petitioner that the notice has been served on the ex-employee of the company.

4. Learned counsel for petitioner submitted that the petitioner has agreed to pay 10% of the tax amount as determined in the impugned order without prejudice to his rights and the petitioner would cooperate to enable the assessing officer to complete the proceedings afresh.

5. Taking note of the facts and circumstances of the case, this Court directs the respondent to accept 10% of the amount as determined in the impugned order, which the petitioner has agreed to pay the same, which can be adjusted from the refund and give one more opportunity to the petitioner to put forth their objections and thereafter to pass appropriate orders on merits and in accordance with law.

6. Even though much can be said against the petitioner with regard to receipt of notice, in order to give one more opportunity to the petitioner, this Court is not inclined to deny the relief that can be granted to the petitioner on technical grounds and the respondent is directed to give one more opportunity to the petitioner.

7. In the result, this petition is allowed and the impugned order of the respondent dated 06.02.2012 is set aside. The petitioner is directed to treat the impugned order as notice and shall submit his objections if any. The petitioner is also directed to appear in person before the authority concerned on any one of the working days before 15th May 2015 and produce all the records. If the

petitioner fails to avail this opportunity, it is open to the respondent to pass orders in terms of the Act after 15th May 2015 and before 30th May 2015. No costs. No costs. Consequently, the connected miscellaneous petition is closed.

