(2016) 01 MAD CK 0072

In the Madras High Court

Case No : W.P. No. 39793 of 2015

Kellogg India Pvt. Limited — APPELLANT

Vs

The Assistant Commissioner (CT), Thiruverkadu Assessment Circle — RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:

Citation : (2016) 01 MAD CK 0072

Hon'ble Judges : R. Mahadevan, J.

Bench : Single Bench

Advocate : Mohammed Shaffiq, for the Appellant; V. Haribabu, Addl. Govt. Pleader, for the Respondent

Final Decision : Disposed Off

Judgement

R. Mahadevan, J.—1. The present Writ Petition has been filed challenging the impugned order passed by the respondent in CST No. 695196/2014-15 dated 26.10.2015.

2. Heard the learned counsel for petitioner and Mr. V. Haribabu, learned Additional Government Pleader who took notice for the respondent and with the consent of both parties, the writ petition is taken up for hearing at the stage of admission itself.

3. The petitioner, who is engaged in manufacture and sales of cereals is an assessee on the files of the respondent under Tamilnadu Value Added Tax Act and Central Sales Tax Act. The petitioner was issued with a notice on 29.7.2015 for the assessment year 2014-2015, wherein, the respondent has proposed to levy tax @ 14.5% on the turnover of Rs. 2,36,98,422/- covered by C Forms and an amount of Rs. 9,53,88,188/- covered by F Forms. Certain turnover for non submission of the statutory forms have been proposed to be treated as interstate sales from Tamilnadu. The petitioner submitted a reply vide its letter dated 22.9.2015 stating that the respondent has erroneously mentioned the interstate

stock transfer value as Rs. 9,53,88,188/- and that the actual turnover for stock transfer from its Chennai branch for the Assessment year 2014-2015 was only Rs. 68,46,225/- and requested time of 1-2 months to submit the remaining statutory forms to substantiate the stand of the petitioner. But the respondent, without considering the same, passed the impugned order on 26.10.2015 accepting the statutory forms worth a turnover of Rs. 2,21,60,178/- and Rs. 26,40,584/- covered by C forms and F forms respectively and the respondent did not provide further time as prayed for submission of Forms and documents to substantiate their case.

4. It is the case of the petitioner that even though the petitioner sought for 1 to 2 months time to submit the requisite forms and documents related to their claim of stock transfer and Interstate Sale, the respondent without providing any opportunity has passed the impugned order by observing that even after grant of one month, the petitioner had not chosen to file the Forms and hence confirmed the proposal.

5. Learned counsel for the petitioner submitted that when the petitioner had requested for one to two months time to produce documentary evidence to substantiate its case, the same has not been considered by the respondent and no order or notice has been passed rejecting the time sought by the petitioner. Thus the petitioner was not given reasonable opportunity for making any further submissions. The learned counsel further submitted that the notice dated 29.7.2015 was received by the petitioner was properly replied on 22.9.2015, but in the impugned order, there is no such reference on the same and the order has been passed without considering the said reply. It is his further submission that it is a settled principle of law that when an application for adjournment is filed by the dealer, it is incumbent on the assessing authority before proceeding to make an assessment to consider the same judiciously and pass an order thereon. Hence according to him, the impugned order passed by the respondent is in violation of principles of natural justice.

6. The learned Additional Government Pleader, on the other hand, put forth his arguments in support of the impugned order.

7. The short issue involved in this case is non production of relevant documents, so as to claim the appropriate relief by the petitioner. According to the learned counsel for the petitioner, the notice dated 29.7.2015 was received by the petitioner and on 22.9.2015, proper reply was also filed. But in the impugned order, there is no such reference on the same and the filing of reply itself is denied. Now it is the specific claim of the petitioner that the documents and records viz., stock transfer entries, L/R copies, delivery challans and F Form issued by the State of Tamilnadu are very much available and if yet another opportunity is provided, the petitioner will be able to produce all the required forms before the respondent for consideration, so that the petitioner will be able to get appropriate relief. This court finds some force in the above submissions.

8. In view of the submissions of the learned counsel for the petitioner, this Court, in the interest of justice and in order to give yet another opportunity to the petitioner to produce relevant statutory forms, is inclined to set aside the impugned order passed by the respondent. Accordingly, the same is set aside and the matter is remanded back to the assessing authority for passing appropriate orders. Under the circumstances, the petitioner is directed to produce the said statutory forms within a period of two weeks from the date of receipt of a copy of this order and on such production, the same shall be considered and necessary orders be passed after affording due opportunity to the petitioner within a period of six weeks thereafter.

9. The Writ Petition is disposed of with the above terms. No costs. Consequently, connected M.P. No. 1 of 2015 is closed.