(2009) 11 MAD CK 0222

In the Madras High Court

Case No : Writ Petition No. 11809 of 2009 and M.P. (MD) No. 1 of 2009

K.R.R. Traders APPELLANT

Vs

Commercial Tax Officer (CT) RESPONDENT

Date of Decision : 18-11-2009

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 16(2)

Citation : (2010) 30 VST 564

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : P. Radhakrishnan, for the Appellant; Pala Ramasamy, Special Government Pleader, for the Respondent

Judgement

M. Jaichandren, J.—This writ petition has been filed praying for a writ of certiorari, to call for the records on the file of the respondent in TNGST No. 4821189/2003-04, dated October 19, 2009, and quash the same, as illegal and violative of the principles of natural justice, as it has been passed without issuing a show-cause notice to the petitioner.

2. The learned Counsel for the petitioner has stated that the petitioner is a dealer in filament yarn and an assessee on the file of the respondent under the provisions of the Tamil Nadu General Sales Tax Act, 1959 and the Central Sales Tax Act, 1956. For the assessment year 2003-04 (TNGST), the original order of assessment was passed, as early as on May 30, 2005. , Thereafter, on June 20, 2006, the respondent had passed the revised order of assessment levying a tax of Rs. 41,053, and a surcharge of Rs. 2,053, on the basis of the D3 report forwarded to him by the officers of the enforcement wing, who had inspected the place of business of the petitioner, on August 9, 2003. But in the revised assessment, the respondent also levied a penalty of Rs. 2,970, u/s 16(2) of the Tamil Nadu General Sales Tax Act, 1959.

3. Against the revised order of assessment, the petitioner had preferred an appeal before the Appellate Assistant Commissioner (CT), Madurai (South), in

A.P. No. 276 of 2006. The appellate authority, after considering the relevant factors, had set aside the revised order of assessment, dated June 20, 2006, and remanded the matter back to the respondent, vide his order, in A.P. No. 276 of 2006, dated May 11, 2007, with a specific direction to consider the contentions raised by the petitioner, along with the books of account of the petitioner and to pass an order, afresh, in accordance with law.

4. It has also been stated that during the pendency of the appeal in A.P. No. 276 of 2006, and prior to the passing of the order in the appeal, on April 27, 2007, the respondent had passed another order of assessment levying a penalty of Rs. 64,659, for the reason that the quantum of penalty had been wrongly calculated, as Rs. 2,970 and it should have been Rs. 64,659. Against the revised order of assessment, the petitioner had preferred an appeal before the Appellate Assistant Commissioner (CT), Madurai (South), in A.P. No. 182 of 2007. The appellate authority had, again, set aside the second revised order of assessment, dated April 27, 2007, and remanded the matter back to the respondent, vide his order, in A.P. No. 182 of 2007, dated October 10, 2007, after referring to his earlier order of remand directing the respondent to reconsider the matter, afresh and to pass an order, in accordance with law, after giving an opportunity of hearing to the petitioner.

5. The main contention raised by the learned Counsel for the petitioner is that the respondent, without giving sufficient opportunity of hearing to the petitioner, had passed the impugned order, dated October 19, 2009, in TNGST No. 4821189/2003-04. Even though in the impugned order, dated October 19, 2009, the respondent had stated that summons had been issued to the petitioner, on September 17, 2008, September 30, 2008, November 21, 2008 and September 30, 2009, only the last summon, dated September 30, 2009, sent by R.P.A.D., fixing the date of hearing as October 13, 2009, had been received by the petitioner and the earlier summons, said to have been issued, on September 17, 2008, September 30, 2008 and November 21, 2008, had not been received by the petitioner. On receiving, the summon, dated September 30, 2009, he could not appear on the assigned date before the respondent, since he was unwell, due to jaundice. In such circumstances, the petitioner had requested that the impugned order of the respondent, dated October 19, 2009, be set aside by this Court and the respondent may be directed to pass appropriate orders, with regard to the total assessment, in respect of the taxable turnover for the year 2003-04, in accordance with the provisions of the Tamil Nadu General Sales Tax Act, 1959, after giving sufficient opportunity to the petitioner, to put forth his case. He had also submitted that the petitioner would appear before the respondent, on November 26, 2009, to the summon issued by the respondent on September 30, 2009, and he would comply with the requirements, as requested by the respondent.

6. Mr. Pala Ramasamy, the learned Special Government Pleader appearing on behalf of the respondents has no objection for this Court passing such an order.

7. In view of the submissions made by the learned Counsels appearing for the petitioner, as well as the respondent, the impugned order, dated October 19, 2009, made in TNGST No. 4821189/2003-04, is set aside, leaving it open to the respondent to pass appropriate orders, pursuant to the remand made by the respondent, dated May 11, 2007 and October 10, 2007, made in A.P. Nos. 276 of 2006 and 182 of 2007, respectively, within a period of twelve weeks from the date of the appearance of the petitioner and on his production of the necessary records, including the books of accounts, relating to the assessment year 2003-04.

8. Accordingly, the writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is also closed.