(2002) 10 MAD CK 0143

In the Madras High Court

Case No : Writ Petition No''s. 13428 and 39403 of 2002 and W.P. No''s. 18057 and 58736 of 2002

Madras Granites (P) Ltd. APPELLANT

Vs

Commercial Tax Officer and Another RESPONDENT

Date of Decision : 30-10-2002

Acts Referred:

Citation : (2006) 146 STC 642

Hon'ble Judges : N.V. Balasubramanian, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : K. Ramagopal, for the Appellant; T. Ayyasamy, Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

N.V. Balasubramanian, J.—Mr. T. Ayyasamy, learned Government Pleader (Taxes) takes notice for the respondents.

2. W.P. No. 13428 of 2002 is filed challenging the order of the Tamil Nadu Taxation Special Tribunal, Chennai, dated March 28, 2002 made in O.P. No. 167 of 2002 for the assessment year 1997-98. W.P. No. 39403 of 2002 is filed challenging the order of the Tamil Nadu Taxation Special Tribunal, Chennai, dated September 19, 2002 made in O.P. No. 795 of 2002 for the assessment year 1998-99.

3. It is not necessary to go into the larger question as we see from the records that the premises of the dealer was inspected by the Enforcement Wing of the Commercial Tax Department, and on the basis of the material collected during the said operation, the Deputy Commissioner (CT), Enforcement, Salem, has forwarded D-3 proposal and the Assistant Commissioner (CT), Enforcement, Salem, has approved the said proposal and forwarded the same to the assessing officer with a direction to implement the said proposal.

4. No doubt, the assessing officer issued pre-assessment notice including the

notice for levy of penalty calling for objections from the dealer and after receiving reply from the dealer, completed the assessment on the basis of D-3 proposal forwarded by the Assistant Commissioner (CT), Enforcement. We find from the records that in D-3 proposal, the Deputy Commissioner (CT), Enforcement, Salem, has not only determined the surplus turnover, but also determined the quantum of penalty that might be imposed on the dealer. Therefore, when the higher officer, viz., the Assistant Commissioner (CT), Enforcement, has directed the assessing officer to complete the assessment on the basis of the proposal in D-3 form, we find that the assessing officer, who is lower in rank in the hierarchy of officers, is bound by the said direction, and the records also show that the assessing officer has not independently applied his mind, but adopted the sales turnover as found in D-3 proposal and also levied the penalty in the manner indicated in D-3 proposal. It is well-settled that the assessing officer is a quasi-judicial authority and in exercising his quasi-judicial function of completing the assessment, he is not bound by the instructions or directions of the higher authorities. We find that in both the matters the assessing officer has acted on the basis of the directions of his higher authority in completing the assessments. We hold that the assessments are not sustainable in law. Accordingly, the orders of assessment in both the matters are liable to be quashed and consequently, the orders of the Special Tribunal confirming the orders of assessment are also liable to be quashed. However, it is open to the assessing officer, viz., the first respondent herein, to pass orders of assessment afresh in accordance with law, after giving an opportunity to the petitioner. Both the writ petitions stand allowed. No costs. Connected W.P.M.Ps. are closed.