(2017) 06 MAD CK 0094

In the Madras High Court

Case No : 17, 18 & 22 of 2017 and W M P Nos 12, 13 & 19 of 2017

M/s. Dhinakarran & Co., Represented by its Sole Proprietor N.Krishnaraj — APPELLANT

Vs

The Assistant Commissioner (CT) Thudiyalur Assessment Circle — RESPONDENT

Date of Decision : 05-06-2017

Acts Referred:
Tamil Nadu Value Added Tax Act, 2006, Section 19(13)

Citation : (2017) 06 MAD CK 0094

Hon'ble Judges : K.Ravichandrabaabu

Bench : SINGLE BENCH

Advocate : K.Ravichandrabaabu

Judgement

1. These three writ petitions are filed challenging the orders of assessment passed in respect of the assessment years 2012-13, 2013-14 and 2014-15. The Assessing Officer imposed the tax and penalty in respect of each assessment year by giving a finding that the petitioner received only the bills from one Om Muruga Steels who is the bill trader without there being any material movement and claimed the ITC under Section 19(13) of the Tamil Nadu VAT Act,2006.

2. Learned counsel for the petitioner Mr.N.Inbarajan, submitted that the impugned assessment orders cannot withstand the scrutiny of law, since it violates the principles of natural justice, as the petitioner was not given an opportunity of personal hearing, even though such opportunity is specifically contemplated under Section 19(13) of the said Act. Apart from raising the above contention, the learned counsel further submitted that even on merits, the assessment order cannot be sustained, since it came to be passed pursuant to a notice of proposal containing no details of the allegation made against the petitioner, which consequently, deprived the petitioner from making an effective reply.

3. On the other hand, the learned Government Advocate submitted that the assessment orders were passed in pursuant to the information collected by the Officers at the time of inspection conducted in the place of business of the petitioner on 18.08.2015 and 30.09.2015 and all those details were culled out from the accounts maintained by the petitioner. Therefore, he submitted that there is no necessity to furnish those details to the petitioner, as they are very much available with them.

4. Heard both sides.

5. It is not in dispute that the Assessing Officer has issued notice of proposal on 24.10.2016 in respect of all the three assessment orders. A perusal of the said notice would only show that the Assessing Officer, after reiterating the relevant provision of law, namely, Section 19(13) of the Tamil Nadu VAT Act, 2006, has only stated that the petitioner had entered into the transaction as provided under Section 19(13) of the said Act with other dealer viz., Om Muruga Steels and claimed ITC to avoid tax payment without any material movement. Except saying so, absolutely there is no material details given in the said notice, more particularly, as to what are the bills, which according to the Department, will fall within the scope and ambit of Section 19(13) of the said Act. Except stating the total value of purchase for each assessment year, the notice does not contain any other details, which according to my considered view, has certainly prevented the petitioner from making an effective objection. In fact, when the petitioner has made their objection on 11.11.2016, has specifically sought for those details by stating that without furnishing those details, the petitioner were unable to verify the transaction and submit the particulars of co-relation therefor. Even after receipt of such reply from the petitioner, the Assessing Officer has not chosen to give any details, apart from the fact that an opportunity of personal hearing was also not afforded to the petitioner. On the other hand, the Assessing Officer straightaway proceeded to pass orders of assessment. One more aspect which is pointed out by the learned counsel for the petitioner in respect of the assessment years 2012-2013 and 2013-2014 is that the Assessing Officer imposed penalty in the orders of assessment, without there being any notice of proposal of penalty for those two assessment years. Needless to say that without there being any proposal, imposing of penalty cannot be resorted to or sustained.

6. Considering the above facts and circumstances, this Court is fully satisfied that the impugned orders of assessment cannot be sustained both on the ground of violation of principles of natural justice and also on the reason that the petitioner was reasonably prevented from making effective representation/ objection to the notice of proposal as they do not contain the relevant material details and particulars of allegations.

7. Therefore, this Court is fully satisfied to set aside those impugned orders and remit the matter back to the Assessing Officer for re-doing the assessment, after issuing fresh notice of proposal to the petitioner. Accordingly, the writ petitions are allowed and the impugned orders are set aside. Consequently, the matter is

remitted back to the Assessing Officer for re-doing the assessment, commencing from the stage of issuance of notice of proposal. It is made clear that once the notice is issued with relevant details and particulars, the petitioner shall file their objection without seeking for further time. Once they file their objections, the Assessing Officer will pass orders of assessment, after giving them an opportunity of personal hearing as well. The whole exercise shall be done by the Assessing Officer within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.