(2012) 02 MAD CK 0197

In the Madras High Court

Case No : Writ Petition No. 3482 of 2012

M/s. Orient Cement — APPELLANT

Vs

The Assistant Commissioner (CT) Anna Salai Assessment Circle III Chennai 6 — RESPONDENT

Date of Decision : 28-02-2012

Acts Referred:
Tamil Nadu Value Added Tax Act, 2006 — Section 27, 51

Citation : (2012) 02 MAD CK 0197

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : S.N. Kirubanandam, for the Appellant; A.R. Jayaprathap Government Advocate (T), for the Respondent

Final Decision : Dismissed

Judgement

M. Jaichandren

1. Heard the learned counsels appearing for both sides. The main contention of the learned counsel appearing for the petitioner is that the impugned order, dated 24.1.2012, had been passed by the respondent, without having any materials to pass such an order, except the materials supplied by the petitioner.

2. He had further submitted that the onus of proving the alleged sales omission, u/s 27 of the Tamil Nadu Value Added Tax Act, 2006, is on the Department. The said onus had not been discharged by the respondent to hold that the petitioner is liable to pay the tax, as per the impugned order of the respondent, dated 24.1.2012.Therefore, he had submitted that the impugned order of the respondent, dated 24.1.2012, had been passed by the respondent, without having the jurisdiction to do so.

3. Per contra, the learned Government Advocate appearing for the respondent had submitted that the respondent had issued two notices, dated 7.7.2011 and 8.9.2011, to the petitioner. The reply filed by the petitioner, on 25.7.2011, had

been considered by the respondent. The respondent had found that the reply filed by the petitioner and the stock statement furnished had been verified. As per the stock statement filed by the petitioner, there was no opening stock, as on 1.4.2009 and closing stock, as on 31.3.2010. Therefore, the entire stock received had been taken as disposed of during the same year.

4. It had been further found that the value fixed byte factory, while sending the cements to the state of Tamil Nadir was said to be as ''notional value''. Any notional value may not be less than the cost of the materials. Hence, the value of the cements fixed by the factory, in the state of Andhra Pradesh, while sending the same to the state of Tamil Nadir, may not be less than the cost of the cements. The sale value reported by the dealer in the returns have been more than the value fixed by the factory'' cost price''. Accordingly, the respondent had held that the difference in the value should be treated as sales omission, which is liable to be assessed to tax at 12.5%.In such view of the matter, it had been proposed to revise the assessment, for the year 2009-10, under the Tamil Nadu Value Added Tax Act, 2006. In such circumstances, the objections raised by the petitioner had been overruled and the proposal had been confirmed, and the assessment, forth year 2009-10, under the Tamil Nadir Value Added Tax Act,2006, had been revised, u/s 27 of the said Act.

5. The learned Government Advocate appearing for the respondent had further submitted that the petitioner can file an appeal, as provided u/s 51 of the Thailand Value Added Tax Act, 2006.

6. In view of the submissions made by the learned counsels appearing for the parties concerned, this Court is of the considered view that the petitioner has not shown sufficient cause or reason to interfere with the impugned order, dated 24.1.2012, at this stage. Further, this Court finds that the issue raised by the petitioner, in the present writ petition, could be raised before the appellate authority, by way of an appeal, u/s 51 of the Tamil Nadir Value Added Tax Act, 2006.

7. In such view of the matter, without going into the merits of the case, the petitioner is directed to file an appeal against the impugned order of the respondent, dated 24.1.2012, before the appellate authority concerned, within a period of fifteen days from the date of receipt of a copy of this order. It is made clear that it would be open to the petitioner to raise all the grounds raised in the present writ petition, before the appellate authority concerned. The Registry is directed to return the original impugned order, dated 24.1.2012, to the learned counsel appearing for the petitioner. Accordingly, the writ petition stands dismissed. No costs. Connected M.P.No.1 of 2012 is closed.