(2014) 04 MAD CK 0295

In the Madras High Court

Case No : Writ Petition Nos. 9498 to 9500 of 2014 and M.P. Nos. 1 and 2 of 2014

Nagappa Auto APPELLANT

Vs

Assistant Commissioner (CT) (Main) RESPONDENT

Date of Decision : 02-04-2014

Acts Referred:

Citation : (2014) 73 VST 459

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Judgement

B. Rajendran, J.—These writ petitions have been filed challenging the impugned proceedings dated January 7, 2014 and March 10, 2014. The learned counsel for the petitioner submitted that before passing the impugned orders, the respondent failed to issued show-cause notice to the petitioner as per circular dated April 20, 2001 issued by the Special Commissioner and Commissioner of Commercial Taxes, Chepauk, Chennai 600005 and therefore, the impugned orders are not sustainable in law.

2. The learned Additional Government Pleader submitted that though notice has not been issued to the petitioner, in the impugned proceedings the details of amount of arrears and other details as contemplated under circular dated April 20, 2001 have been mentioned and therefore, the impugned proceedings are correct.

3. Heard Mr. C. Baktha Siromoni, learned counsel appearing for the petitioner and Mr. Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent.

4. By consent of both sides, the writ petitions are taken up for final disposal at the admission stage.

5. Admittedly, the impugned proceedings have been issued without issuing show-cause notice to the petitioner. However, it is the contention of the learned

Additional Government Pleader that in the impugned proceedings, details as contemplated under circular dated April 20, 2001 have been mentioned. In this context, it is pertinent to extract the relevant portion of the circular dated April 20, 2001, wherein it has been mentioned as follows:

5. Notice shall always be issued before imposing penalty. Though penalty under section 24(3) is automatic, issue of notice is desirable since there may be disputes on the actual amount of arrears, number of days of delay and the calculation of penalty. The notice to levy penalty shall contain the details of amount of arrears, due date for payment, date of payment, number of days delay and the penalty payable.

6. From the reading of the said circular, it is clear that before imposing penalty, notice has to be issued to the assessee and the said notice should also contain the details of amount of arrears, due date of payment, date of payment, number of days delay and the penalty payable.

7. In the case on hand, it is clear that without issuing such notice as contemplated under the circular, the respondent has straightaway passed the impugned proceedings, which is not correct. Further, it is pertinent to point out the judgment of this court in Millennium Motors Vs. Commercial Tax Officer and Another, , wherein, this court has held that before imposing penalty, notice has to be issued to the petitioner well in advance. It is useful to extract the said portion of the judgment, which reads thus (page 322 in 39 VST):

"In the case on hand, the respondent being the subordinate officer, is bound to follow the said circular and admittedly the same is not followed, while passing the impugned order. By issuing notice and by giving opportunity to the petitioner, the right of the respondent will not be affected in any manner and the petitioner would be in a position to state its case and defence, if any, for not levying such penalty. Hence the impugned orders passed in violation of the said circular, cannot be sustained.

On the above limited ground of not giving notice and opportunity of hearing to the petitioner before imposing penalty, the impugned orders are set aside and the matters are remitted back to the respondent. The first respondent is directed to issue notice to the petitioner with regard to the liability of the petitioner to pay penalty amount, within a period of two weeks from the date of receipt of copy of this order. The petitioner is given two weeks time to submit his explanation and on receipt of such notice, the respondent is directed to consider the same and proceed further in the matter in accordance with law. If the impugned orders are found sustainable after fresh orders are passed, the same may be enforced. Till fresh orders are passed as stated above the impugned orders shall not be enforced."

8. In such circumstances, I am of the view that the impugned orders passed in violation of the said circular, cannot be sustained. Accordingly the impugned orders are quashed. The petitioner is directed to submit their reply by treating

the impugned proceedings as show-cause notices, within a period of three weeks from the date of receipt of a copy of this order. Thereafter, the respondent shall consider the same and pass orders in accordance with law, after giving an opportunity of personal hearing to the petitioner-company. The writ petitions are allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petitions are closed.