(2015) 03 MAD CK 0393

In the Madras High Court

Case No : Writ Petition No. 6979 of 2015 and M.P. No. 1 of 2015

New Consolidated Construction Co. Ltd. APPELLANT

Vs

The Assistant Commissioner (CT) RESPONDENT

Date of Decision : 17-03-2015

Acts Referred:

Central Sales Tax Act, 1956 — Section 9, 9 (2)
Tamil Nadu Value Added Tax Act, 2006 — Section 27, 27 (3), 5

Citation : (2015) 03 MAD CK 0393

Hon'ble Judges : S. Vaidyanathan, J

Bench : Single Bench

Advocate : R. Kumar, for the Appellant; Manoharan Sundaram, Additional Government Pleader, Advocates for the Respondent

Judgement

S. Vaidyanathan, J.

1. The petitioner seeks to quash the order dated 30.12.2014 of the respondent, in and by which, the respondent confirmed the proposal to levy tax, determined the tax liability of the petitioner and also imposed penalty.

2. The petitioner is engaged in contract works and are registered dealer on the file of the respondent herein. During the course of such business, on 18.01.2014 the Deputy Commercial tax Officer, Enforcement inspected the place of business of the petitioner. According to the petitioner, the inspection team allegedly found from their website that the petitioner had purchased scaffholding from other State and therefore the petitioner is liable for levy of local tax and 150% penalty under Section 27 (3) of the Tamil Nadu Value Added Tax Act, 2006 read with Section 9 (2) of the Central Sales Tax Act. According to the petitioner, even though they have purchased such materials from other States, they have paid tax under Section 5 of the Tamil Nadu Value Added Tax Act on the transfer of property in goods and therefore the levy as well as penalty proposed to be imposed is arbitrary. Based on the report of the enforcement wing officials, a notice dated 28.11.2014 was sent to the petitioner calling upon them to explain

as to why the proposal to estimate and assess the sale suppression be not ordered under Section 9 of the CST Act read with Section 27 of the TNVAT Act, 2006. The petitioner has given a detailed reply dated 31.12.2014 stating that during their course of business to execute work contracts, the scaffholding have been purchased from other States not for being utilised in the works contract but retained as assets for use in the execution of works contract as an additional equipment with other materials. Notwithstanding such objection, the respondent confirmed the proposal and assessed the sales suppression under Section 9 of the CST Act read with Section 27 of the TNVAT Act, 2006 for the assessment year 2013-2014 and called upon the petitioner to pay the tax amount.

3. The learned counsel for the petitioner would contend that the respondent proceeded on the footing that the petitioner had contracted inter-state sale and for having suppressed such sale. However, the respondent has not furnished any documentary evidence for arriving at such conclusion and the impugned order has been passed only on the basis of the report received from the Enforcement Wing officials and on the basis of the date available in their official website, without verifying the books of accounts maintained by the petitioner. The respondent, soon after receipt of the objections from the petitioner, has passed the impugned order without giving an opportunity of hearing to the petitioner. Unless an opportunity of hearing is given to the petitioner, in a case of this nature, it will be difficult for the petitioner to disprove the claim made by the respondent. Therefore, the learned counsel appearing for the petitioner prayed for setting aside the impugned order and to direct the respondent to afford an opportunity of hearing.

4. On the above contention, this Court heard the learned Additional Government Pleader (Tax) appearing for the respondent and perused the materials placed on record.

5. It is seen from the records that the impugned order has been passed by the respondent on the strength of a report received from the Enforcement Wing Officials. Admittedly, a notice dated 28.11.2014 was sent to the petitioner before passing the impugned order, for which, the petitioner has given a detailed reply dated 31.12.2014. The petitioner said to have enclosed certain documentary evidence along with the reply such as copy of work orders received from the other State and other documents to show the work they have undertaken in other States. However, the respondent, in the impugned order states that no such documentary evidence have been enclosed along with the reply. It is also seen from the impugned order that before passing the impugned order, the petitioner was not given an opportunity of hearing for production of documentary evidence. The respondent, by simply disbelieving the version of the petitioner has passed the impugned order. In a case of this nature, the respondent ought to have once again called upon the petitioner to produce either the books of accounts maintained by them or documentary evidence to substantiate their defence when it is the case of the respondent that the petitioner did not produce

any documentary evidence in support of their defence. This is one of the fundamental requirement of the principles of natural justice. Therefore, I am of the considered view that one more opportunity shall be given to the petitioner to produce documentary evidence in their possession to substantiate their defence.

Accordingly, the impugned order dated 31.12.2014 of the respondent is set aside. The writ petition is allowed. No costs. The petitioner is directed to appear before the respondent on 28.04.2015 and produce the documentary evidence, including the books of accounts to substantiate their objections. The respondent is also directed to hear the petitioner, consider the documentary evidence that may be produced by the petitioner and thereafter pass orders on merits and in accordance with law, as expeditiously as possible. It is made clear that if the petitioner did not appear before the respondent on 28.04.2015, the benefit of this order will not be available to them and consequently, the order dated 31.12.2014 passed by the respondent shall stand restored. Consequently, connected miscellaneous petition is closed.