(2011) 03 MAD CK 0494

In the Madras High Court

Case No : Writ Petition No. 3323 of 2011

O.S. Healthy Care APPELLANT

Vs

The Assistant Commissioner (CT) RESPONDENT

Date of Decision : 04-03-2011

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 16(1)
Tamil Nadu General Sales Tax Rules, 1959 — Rule 52

Citation : (2011) 03 MAD CK 0494

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : S. Ramanathan, for the Appellant; K. Radhakrishnan, Government Advocate (T), for the Respondent

Judgement

M. Jaichandren, J.—It has been stated that the Petitioner was a registered dealer, both under the Tamil Nadu General Sales Tax Act, 1959, and the Central Sales Tax Act, 1956, and has been an Assessee on the file of the Respondent. The Petitioner had closed down the business in the year, 2007. The Petitioner had filed the monthly returns with the Respondent, regularly, by disclosing the sales turnover for the year 2005-06.

2. It has been further stated that the Petitioner had also filed A9 returns claiming exemption on the second sales of medicines. The Petitioner had disclosed all the necessary details, including the invoice numbers, dates, amounts, as well as the full address of the dealers from whom the goods had been purchased. The returns filed by the Petitioner had been acknowledged by the Respondent. However, the Respondent had passed the impugned order, dated 6.10.2010, stating that it had been seen from the assessment records that the exemption granted in favour of the Petitioner, relating to the second sales of medicines, was not in its favour, as the Petitioner had not filed the purchase details to prove that the goods in question had already suffered tax at an earlier stage. Thus, the Respondent had proposed to disallow the exemption on the turnover of Rs.

1,20,73,403/- and it had been proposed to tax at the rate of 10%.

3. It had also been stated, in the impugned order of the Respondent, dated 6.10.2010, that in spite of a notice, dated 10.6.2008, having been issued to the Petitioner, inviting objections, the Petitioner had not filed any objections. Therefore, the Respondent had confirmed the proposal, by determining the total taxable turnover at Rs. 1,20,73,403/-, by his impugned proceedings, dated 6.10.2010.

4. No counter affidavit has been filed on behalf of the Respondent.

5. The learned Counsel appearing for the Petitioner had submitted that the impugned order of the Respondent, dated 6.10.2010, is arbitrary, illegal and unsustainable in the eye of law. The Respondent had failed to consider the fact that no notice had been issued to the Petitioner before the impugned order had been passed. The notice, dated 10.6.2008, said to have been issued by the Respondent, had not been served on the Petitioner. The Petitioner had closed down the business in the year, 2007.

6. The learned Counsel appearing for the Petitioner had further submitted that the Respondent had failed to consider the provisions of Section 16(1)(a) of the Tamil Nadu General Sales Tax Act, 1959, before passing the impugned order, dated 6.10.2010. The Respondent had failed to issue the notice, dated 10.6.2008, as per Rule 52 of the Tamil Nadu General Sales Tax Rules. As such, the impugned order of the Respondent, dated 6.10.2010, is liable to be set aside.

7. The learned Government Advocate appearing for the Respondent had not refuted the submissions made by the learned Counsel appearing for the Petitioner.

8. In such circumstances, the impugned order of the Respondent, dated 6.10.2010, is set aside. The Respondent is permitted to issue a pre-revision notice to the Petitioner, in respect of the assessment year 2005-06. On receipt of such notice, it would be open to the Petitioner to raise its objections, if any. On receipt of such objections, raised by the Petitioner, the Respondent shall consider the same and pass appropriate orders thereon, as expeditiously as possible. The pre-revision notice to be issued by the Respondent shall be sent to the address furnished by the Petitioner in the affidavit filed in support of the writ petition, namely, No. 26, Yadhavar Street, Acharapakkam, Madurantakan Taluk.

The writ petition stands ordered accordingly. No costs. Connected M.P. No. 1 of 2011 is closed.

