(2014) 10 MAD CK 0306

In the Madras High Court

Case No : Writ Petition Nos. 22001 to 22004 of 2011

Pankaj Impex (India) APPELLANT

Vs

The Commercial Tax Officer RESPONDENT

Date of Decision : 14-10-2014

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 16(D), 16D

Citation : (2014) 10 MAD CK 0306

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Judgement

T.S. Sivagnanam, J.—By consent of the learned counsel on either side, these writ petitions are taken up for final disposal.

2. Heard Mr.T.Pramod Kumar Chopra, learned counsel appearing for the petitioner and Mr. Manokaran Sundaram, learned Additional Government Pleader for the respondent.

3. The petitioner has filed these writ petitions, challenging the orders of assessment passed by the respondent under the provisions of the CST Act for the assessment years 1998-1999 to 2001-2002.

4. The petitioner is a registered dealer on the file of the respondents under the provisions of TNGST and CST Acts. The assessment for four years was completed by orders dated 29.11.2005. The petitioner, aggrieved by such orders of assessments, filed applications under Section 16D of the TNGST Act before the Special Committee. The Special Committee, by order dated 31.08.2007 set aside the orders of assessment and remanded the matter back to the Assessing Officer with a direction to give an opportunity to the applicant to file objections along with the relevant records and documents after making proper service of the pre-assessment notices to the dealer and pass fresh order. Pursuant thereto, notices were issued on 24.09.2007, calling upon the petitioner to appear in person on 10.10.2007. In response to the notices, the petitioner sent a reply on

18.03.2008, furnishing all the documents and also pointed out that they have transferred DEPB licences to Calcutta Branch and apart from the transfer from Chennai Branch, they have not done any other activity in Calcutta Branch and as there was no tax in Calcutta on DEPB licences, they did not get themselves registered in Calcutta. The petitioner also provided a copy of gazette notification, stating that there was no tax on DEPB licences in Calcutta. Further, the petitioner also produced records of stock transfer to Pondicherry and Calcutta for perusal of the assessing officer and requested consideration of all the documents.

5. Thereupon, the Assessing Officer passed orders of assessment on 28.03.2008. Thereafter, the petitioner once again approached the Special Committee by filing application under Section 16(D), which came to be disposed of by order dated 27.01.2011 and the said order was challenged by the petitioner vide writ petition in W.P. No.11328 of 2011. In the said writ petition, not only the orders passed by the Special Committee dated 27.01.2011 was set aside, but also the orders of assessment dated 28.03.2008 were set aside and the matter was remanded for fresh consideration.

6. Pursuant thereto, notices were issued on 25.07.2011, calling upon the petitioner to submit its objections within a period of 10 days. The petitioner submitted detailed objections for each of the notices. In the explanation submitted by the petitioner, the petitioner specifically requested the authority for affording an opportunity of personal hearing. Furthermore, the petitioner stated that it is the case of stock transfer to Calcutta and there is no tax payable. Further, it was stated that necessity of filing Form-F is not mandatory in terms of various decisions of this Court and the Circular of Government of India dated 22.01.1974 and Board Circular in BP.RT 4252/76 dated 21.09.1976. Further, it was submitted that since the assessment was completed based on the books of account, the question of levying penalty does not arise. In this regard, reliance was placed on several decisions of this Court. The petitioner also requested for personal hearing to be afforded and undertook to produce information required by the department.

7. Inspite of the petitioner having submitted such reply, in the impugned proceedings, the respondent has extracted the statement given by the petitioner before the Enforcement Wing Officers and stated that now dealers are saying that the stock transfers were done to Pondy to their own Branch.

8. On perusal of the impugned order, it is seen that the Assessing Officer is solely guided by the proposal given by the Enforcement Wing Officers and there is no independent application of mind by the Assessing Officer, while assessing the petitioner''s returns. Hence, the impugned proceedings are held to be bad in law. Furthermore, the contention that no penalty is leviable, was specifically raised by the petitioner, since the assessments were completed by taking materials from the books of account produced by the petitioner. In such circumstances, the question of levy of penalty does not arise and the fundamental aspect has also been ignored by the Assessing Officer. Therefore, the petitioner is entitled to

succeed.

9. In the result, all these writ petitions are allowed. The impugned orders of assessment are quashed and the matter is remanded back to the respondent for fresh consideration. The 1st respondent shall afford an opportunity of personal hearing to the petitioner, permit them to produce records and other materials in support of their claim and thereafter pass a reasoned order on merits and in accordance with law, bearing in mind the observations made in this order. No costs. Consequently, connected miscellaneous petitions are closed.

