(2015) 09 MAD CK 0125

In the Madras High Court

Case No : W.P. Nos. 10849 to 10851 of 2015 and M.P. No. 1 of 2015

Ravi Timber Agency APPELLANT

Vs

The Assistant Commissioner (CT) RESPONDENT

Date of Decision : 04-09-2015

Acts Referred:

Citation : (2015) 09 MAD CK 0125

Hon'ble Judges : R. Mahadevan, J.

Bench : Single Bench

Advocate : T. Pramodkumar Chopda, for the Appellant; S. Kanmani Annamalai, AGP(T), for the Respondent

Judgement

R. Mahadevan, J.—Heard the learned counsel for the petitioner and Mr. S. Kanmani Annamalai, learned Additional Government Pleader (Taxes) for the respondent.

2. These writ petitions are filed challenging the orders of the respondent dated 27.02.2015 and to direct the respondent to consider the objections and grant personal hearing.

3.1 According to the learned counsel for the petitioner, the petitioner, being a registered dealer under the TNVAT Act and CST Act, is an assessee on the file of the respondent. For the assessment years 2007-08, 2008-09 and 2011-12, the petitioner filed its monthly returns, disclosing all its purchases and sales made during the year and based on the same, respective assessment orders under Section 22 of the Act were passed, which, according to the learned counsel for the petitioner, were not received by the petitioner.

3.2 Further, according to the learned counsel for the petitioner, the place of business of the petitioner was inspected on 20.06.2013, based on which, the respondent had issued notices dated 26.12.2014, for which, detailed replies dated 06.01.2015 were filed by the petitioner. However, after a period of two months, the respondent passed the impugned orders dated 27.02.2015, which were received on 06.03.2015, confirming the proposal on the ground that the petitioner had not filed any objections for the notices dated 26.12.2014.

3.3. That apart, according to the learned counsel for the petitioner, by issuing notices dated 26.12.2014, though objections were called for within 15 days from the date of receipt of such notices, however, there is no whisper about granting opportunity of being heard, however, the respondent, in the impugned orders had alleged that the petitioner had not availed the opportunity of being heard till date, which is without any basis.

3.4 Besides, according to the learned counsel for the petitioner, penalty under Section 27(3) may be levied only in case of escapement of assessment due to wilful non disclosure of assessable turnover and in the absence of any omission of turnover, mere levy of tax on alleged suppression on flimsy and erroneous ground will not amount to wilful non disclosure of assessable turnover, so as to levy penalty under the Act and therefore, the levy of maximum penalty is illegal.

3.5. Adding further, the learned counsel for the petitioner would submit that the replies filed by the petitioner along with the documents were acknowledged by the respondent on 08.01.2015. The respondent, after receiving the replies, conveniently, ignored the same and passed the impugned orders by stating that the petitioner had not filed any replies, which is incorrect and contrary to records.

3.6 Relying upon the acknowledgement entries, the learned counsel for the petitioner has sought for quashing of the impugned orders dated 27.02.2015 with a direction to the respondent to consider the detailed objections and pass orders afresh, after providing due opportunity to them.

4. The learned Additional Government Pleader (Taxes) fairly submitted that the respondent may be directed to consider the detailed objections filed by the petitioner and thereafter pass appropriate orders afresh, after affording due opportunity of personal hearing to the petitioner.

5. This Court considered the submissions made by the learned counsel on either side and perused the materials available on record.

6. For the pre-assessment notices dated 26.12.2014, the petitioner had filed replies dated 06.01.2015, which are supported by acknowledgements dated 08.01.2015. However, in the impugned orders, it has been specifically stated that no objections had been filed. Hence, it is crystal clear that the respondent without considering the detailed objections, passed the impugned orders. Hence, the same are liable to be quashed.

7. In view of the above and in view of the submission made by the learned Additional Government Pleader (Taxes), by quashing the impugned orders dated 27.02.2015, the matters are remitted back to the respondent for passing orders afresh. The petitioner is directed to file additional objections, if any, within a period of two weeks from the date of receipt of a copy of this order and on receipt of such objections, the respondent is directed to consider the detailed

objections already filed by the petitioner, so also the additional objections filed, if any, and pass appropriate orders, on merits and in accordance with law, within a period of four weeks thereafter, after providing due opportunity of personal hearing to the petitioner.

The writ petitions are disposed of with the above directions. No costs. Connected miscellaneous petitions are closed.