

(2009) 08 MAD CK 0088

In the Madras High Court

Case No : Writ Petition (MD) . No's. 2574 to 2575 of 2009 and M.P. (MD) . No's. 1 and 2 of 2009

Shelters India

APPELLANT

Vs

The Special Committee and The Assistant Commissioner (CT)

RESPONDENT

Date of Decision : 25-08-2009

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12(2), 12(3), 16(1), 16(2), 16(D)

Citation : (2009) 08 MAD CK 0088

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

Bench : Single Bench

Advocate : S. Karunakar, for the Appellant; Pala Ramasamy, Spl. Govt. Pleader, for the Respondent

Judgement

T.S. Sivagnanam, J.—By consent of both parties, both Writ Petitions are taken up together for final disposal.

2. Since the issues involved in both the Writ Petitions are identical, they are taken up together and disposed of by a common order.

3. The facts leading to the case are as follows:

3.a. The prayer in both the Writ Petitions are to quash the orders passed by the Special Committee constituted under the provisions of Section

16(D) of the Tamil Nadu General Sales Tax Act, 1959, dated 20.02.2009.

3.b. It is seen from the affidavits that orders of assessment came to be passed, on 25.06.2007, against the petitioner calculating the total tax

payable for the assessment years 2000-2001 at Rs. 4,05,400/- and for the assessment year 2001-2002 at 1,73,770/-. The orders of assessment

came to be passed, after the petitioner submitted their objections. However, the petitioner did not choose to file an appeal against the order of

assessment under the provisions of the Act. The petitioner, however, filed an application u/s 16(D) of the TNGST Act, on 10.10.2008, requesting

the Special Committee to set aside the orders of the Assessment for the afore-said two assessment years. In the petition filed before the Special

Committee, the petitioner has stated due to unforeseen problems, they were not able to file a reply to the notice and requested that adverse

interference need not be drawn. The petitioner placed the following facts before the Committee, which are usefully as hereunder:

It is submitted that the turn over has been determined based on the inspection report of the Enforcement Wing Officers who inspected the place of

business on 26.05.2004 and recovery of certain records on issue of D7.

The residential flats named as Unicorn Monor situate at above address was originally intended for Commercial sale of profit. The partnership firm

shelters India never took off. No transaction was effected. The business by name ""Shelters India"" died as a concept.

The same was promoted as a family business by the family members. But as there was no selling trend because of the location, or some reasons

which is not in our comprehension and all the amounts that were invested by them was arranged by way of loan only. As the interest for the loan

were going on increasing, they had to surrender a portion of the property to Sri. Mohammed Ali from whom we had taken money.

For the remaining portion, in order to escape from the escalating interest on loan and as all over family members were having employment carrying

monthly salary, all the portions were sold to the family members by way of raising housing loan from the various banks and the funds realised by

the said means was utilised to settle loan.

4. On the above factual averments, the petitioner stated that there was no commercial transaction involved in the construction of sale of various

flats and hence, there is no incidence of commercial tax. Further, it was stated that the Assessing Authority has levied penalty u/s 12(3)(b) of the

Act and such penalty could be levied only in the case of any concealment turnover with an intention to evade payment of tax. Therefore, it is seen

that the legal issue which was raised before the Committee was as to whether there is any incidence of commercial transaction involved in the

present case and whether there is intention to evade tax.

5. Further, it is stated by the petitioner that they could not effect the pre-deposit of 25% to file an appeal and therefore, they could not avail the remedies under the Act. The learned Counsel for the petitioner would submit that the Committee did not take into consideration the relevant factual details which had been raised to show that the provisions of the Act and Rules are not attracted and that itself would amount to violations of principles of natural justice.

Heard the learned Counsel for the petitioner and the learned Counsel for the respondents.

6. The learned Counsel for the petitioner in support of his contention placed reliance upon an order passed by this Court in W.P. Nos. 34709 to 34712 of 2007, wherein this Court disposed of the said Writ Petition and remanded the matter to the respondents for fresh consideration on merits and in accordance with law.

7. Per contra, The learned Special Government Pleader appearing for the respondents would contend that the impugned orders do not call for interference, more particularly, considering the scope of Section 16(D) of the Act. He would submit that power under the said Section cannot be constituted to substitute the appellate power under the statute and the circumstances warranting invoking of such power is very limited and the committee had found that there has been no violation of principles of natural justice and rightly, rejected the petitioner's case. In such circumstances, the order cannot be assailed by way of these present Writ Petitions. Added that, he points out that D-7 records have been unearthed from the assessee premises by the Enforcement Wing Officers.

8. In reply, the learned Counsel for the petitioner would submit that the Assessing Officer has stated that the entire D-7 records which have been seized, have already been accounted for.

I have carefully considered the submissions made by either parties and perused the materials available on record.

9. Before going into the factual matrix of the matter, it is relevant to extract Section 16(D) of the Act for the purpose of deciding this case.

16. D.1...

(2) Notwithstanding anything contained in this Act, the Special Committee may, of its own motion or on application, call for and examine the

records of the assessing authority in respect of any proceeding or order under Sub-section (2) or (3) of Section 12 or Sub-section (1) or (2) of

Section 16, if such proceeding or order is passed in violation of the provisions of the Act or rules made thereunder or without following the

principles of natural justice, set aside the said proceeding or order and direct the assessing authority to make a fresh assessment and pass fresh

proceeding or order in such manner as may be directed.

Provided that such proceeding or order against which any appeal or writ is pending shall not be entertained under this sub-section.

10. In terms of the said power, the Committee may on its own motion or its application examine the records of the Assessing Officer in respect of

any order u/s 12 (2) or (3) or Section 16(1) or (2), if such proceedings or order is passed.

(a) In violation of the provisions of the Act and the Rules made thereunder.

(b) made without following the principles of natural justice.

and if it is found that on violation of the two conditions as mentioned above, the Committee has powers to direct the Assessing Authority to make

fresh assessment and pass fresh proceeding or order in such manner as may be directed.

11. Therefore, the Committee while considering the petition u/s 16(D) of the Act has to examine as to whether there is a violation of the provisions

of the Act or Rules and that the order of the assessment authority has been passed without following the principles of natural justice.

12. As could be seen in the impugned orders, the Committee had rendered a finding, that on perusal of the files, it revealed that sufficient

opportunity had been given to dealer to file objection and there is no violation of principles of natural justice and Act and Rules.

13. In my opinion, such a finding without reasons itself would be in violation of the principles of natural justice. In the case of *Muhurjee's* case

reported in *S.N. Mukherjee Vs. Union of India*, , the Hon'ble Supreme Court held in paragraph Nos:35,38 and 39, are as follows:

35. Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt

facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also

weighed with this Court in holding that an administrative authority must record reasons for its decision, are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.

...

38. The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fair play in action". As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature,

while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative

authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by

making an express provision to that effect as those contained in the Administrative Procedure Act, 1946 of U.S.A. and the Administrative

Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the

enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the

enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons.

The said requirement cannot, therefore, be insisted upon in such a case.

40. For the reasons aforesaid, it must be concluded that except in cases where the requirement has been dispensed with expressly or by necessary

implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision.

14. Therefore, the necessity to record reasons has been well settled by the various decisions of the Hon''ble Supreme Court as well as in the

decisions cited above. That apart, a specific ground has been raised in the objection that there is no incidence of commercial tax and the question

of levy of penalty also will not arise, as there is no intention to suppress the fact. This, in my view, is a question has to be considered as to whether

that there has been a violation of the provisions of the Act and Rules.

15. In that view of the matter, I deem it appropriate to set aside the impugned orders and remand the matter for fresh consideration to the first

respondent, who shall take into consideration the facts and question of law raised by the petitioner in the petition and pass appropriate orders on

merits and in accordance with law at the earliest. It is also placed on record that the petitioner has already deposited 25% of the total tax amount in

respect of the two assessment years in question.

With the above observations and directions, both Writ Petitions are disposed of. Consequently, connected M.Ps are closed. No costs.