

(2013) 04 MAD CK 0303

In the Madras High Court

Case No : Writ Petition No. 9150 of 2013 and M.P. No. 1 of 2013

Solar Tea Traders

APPELLANT

Vs

Assistant Commissioner (Commercial Tax)

RESPONDENT

Date of Decision : 08-04-2013

Acts Referred:

Citation : (2014) 70 VST 354

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Judgement

V. Dhanapalan, J.—With the consent of both sides, the writ petition itself is taken up for final disposal. Heard Mr. K. Soundararajan, learned counsel for the petitioner and Mr. S. Kanmani Annamalai, learned Government Advocate (Taxes), takes notice for the respondent. The petitioner is a registered tea dealer under the Tamil Nadu Value Added Tax Act, 2006 (in short, "VAT Act") and the Central Sales Tax Act, 1956 (in short, "the Act") as well as a registered buyer member with the Tea Board and is doing tea business for the past twenty years. It is stated that during the assessment year 2007-08, the petitioner had reported a total and taxable turnover of Rs. 3,65,27,733 and also remitted tax at four per cent as per entry 137, Part B of the First Schedule to the VAT Act. The respondent, accepting the turnover reported by the petitioner, passed an order u/s 22(2) of the VAT Act. Even during previous years, the petitioner's turnovers had been accepted and tax was paid at four per cent. While so, the enforcement wing authorities conducted an inspection on December 6, 2010, found the records of Health Inspector, Bangalore; Taluk Health Officer, Tiptur, Karnataka; Director of Food Laboratory, Pune; Public Analyst, Guindy, Chennai; Local Health Authority, Viralmalai Block, Pudukkottai District; and High Court judgment in Crl. A. No. 843 of 2006, dated November 7, 2008 and came to the conclusion that the petitioner had sold adulterated tea and therefore, it is a different commodity falls under the residuary entry No. 69 of Part C of the First Schedule to the VAT Act, and hence, the respondent has issued the impugned order dated December 14, 2012, proposing to revise the assessment u/s 27(3) of the VAT Act, and to

impose tax at 12.5 per cent According to the petitioner, the quality of the tea can be verified by the local authorities under the Prevention of Food Adulteration Act, after taking samples from the dealer and if it is found that anything adulterated is added to the natural tea, the local authorities can initiate proceedings to prosecute the said dealer and punish him and unless it was proved, it cannot be said that the tea is adulterated one. It is stated that the Health Department of Coimbatore City, Municipal Corporation, often visited the business place of the petitioner and found that the products of the petitioner satisfy the PFA standards. Hence, the impugned notice proposing to revise the assessment u/s 27(3) of the VAT Act, is without any jurisdiction and against the statute.

2. Based on the above background pleadings, the learned counsel for the petitioner would submit that the original assessment u/s 22(2) of the VAT Act has to be accepted and that when the tea sample of the petitioner satisfies the standards prescribed under the provisions of the Prevention of Food Adulteration Act, it is not for the respondent now to say that the same is an adulterated coloured one and therefore, it comes under the purview of residuary entry 69, Part C of the First Schedule to the VAT Act.

3. The learned Government Advocate, by going through the materials annexed in the typed-set of papers and the impugned revision notice, would contend that the petitioner was originally assessed u/s 22(2) of the VAT Act and when the place of the petitioner was inspected on December 6, 2010, the records of Health Inspector, South Western Railway Hospital Bangalore; Taluk Health Officer, Tiptur, Karnataka; Local Health Authority, Viralimalai; and High Court order dated November 7, 2008 were seen and it was found that the petitioner had sold adulterated tea only and therefore, it is a different commodity falls under the residuary entry No. 69 of Part C of the First Schedule to the VAT Act, and therefore, the respondent issued the impugned revision notice proposing to levy tax at 12.5 per cent, as the tea sold by the petitioner is an adulterated coloured one. The learned Government Advocate would further contend that the petitioner should have filed his objections to the proposal of the respondent instead of filing the present writ petition, which is not maintainable.

4. It is not in dispute that the petitioner is a registered dealer under the provisions of the VAT Act and the Central Sales Tax Act and is engaged in the business of buying and selling tea. The respondent accepting the turnover reported by the petitioner for the assessment year 2007-08, passed an order u/s 22(2) of the VAT Act. While so, an inspection was conducted by the enforcement wing authorities on December 6, 2010 and found certain records showing that the petitioner added colouring materials into the tea procured by the petitioner and sold them in the markets of Tamil Nadu and Karnataka. Even though the return filed by the petitioner for the assessment year 2007-08 was accepted by the respondent, since it was found that the tea packets supplied by the petitioner were adulterated, the respondent has issued the impugned notice, proposing to levy tax at 12.5 per cent on the taxable turnover of Rs. 3,65,27,733 and the

difference of tax comes to Rs. 31,04,857, and calling for the petitioner to file objections within fifteen days from the date of receipt of the order. Challenging the above revision notice, the petitioner has come forward with the present writ petition on the ground that the action of the respondent in treating the commodity as coming under the residuary entry No. 69, Part C of the First Schedule to the VAT Act and proposing to levy tax at 12.5 per cent without any enquiry into the matter, is contrary to the earlier assessment.

5. Law is well-settled that if there is any violation of principles of natural justice or any infringement of fundamental rights or violation of any Rules and Regulations by any authority, the aggrieved person can invoke jurisdiction of this court under article 226 of the Constitution of India. But, in the present case, the petitioner was called upon to file objections to the impugned revision notice. Without filing objections, the petitioner has filed the present writ petition on the ground that the notice is contrary to the earlier assessment. The petitioner ought to have filed objections and thereafter, if any final order is passed, the petitioner can work out his remedy before the appropriate forum in the manner known to law. Now, it is too premature to invoke the jurisdiction of this court under article 226 of the Constitution of India. However, the learned counsel for the petitioner would make a plea that the petitioner is prepared to file its objections and that the respondent may be directed to consider the same and pass appropriate orders after hearing the petitioner. In the facts and circumstances of the case and in view of the submission made by the learned counsel for the petitioner, the writ petition is disposed of with a direction to the petitioner to file its objections within two weeks from the date of receipt of a copy of this order and thereafter, the respondent shall consider the same and pass appropriate orders, after giving an opportunity of hearing to the petitioner, within a period of four weeks from the date of receipt of objections. Till such time, the parties to this petition are directed to maintain status quo as on today. No costs. Consequently, M.P. No. 1 of 2013 is closed.