

(2009) 04 MAD CK 0030

In the Madras High Court

Case No : Writ Petition (MD) No. 3756 of 2008 and M.P. (MD) No. 1 of 2008

Sornammal and Company

APPELLANT

Vs

Assistant Commissioner (CT) and Another

RESPONDENT

Date of Decision : 27-04-2009

Acts Referred:

Right to Information Act, 2005 — Section 19(3)

Tamil Nadu General Sales Tax Act, 1959 — Section 16(1), 24(3)

Citation : (2009) 26 VST 573

Hon'ble Judges : K.K. Sasidharan, J

Bench : Single Bench

Advocate : M. Md. Ibrahim Ali, for the Appellant; V. Rajasekaran, Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.K. Sasidharan, J.—This writ petition is directed against the proceedings of the first respondent dated March 31, 2008, whereby the

appeal preferred by the petitioner against the order dated February 12, 2008 on the file of the second respondent was rejected.

2. The petitioner is an assessee on the file of the first respondent. The petitioner is engaged in manufacturing neem oil and neem oil cake. In order

to manufacture neem oil and oil cake, the petitioner has to purchase neem oil seeds and it was only after crushing the oil seeds, that neem oil cakes

have to be manufactured. The sale of neem oil is taxable, whereas the sale of neem oil cake was exempted from the liability of payment of tax,

since it was treated as organic manure as per the clarification issued by the Commissioner of Commercial Taxes, Chennai.

3. The second respondent, as per notice dated December 31, 2007, called upon the petitioner to pay interest u/s 24(3) of the Act with respect to

the assessment years 1997-98 to 2000-01. According to the petitioner, no notice was issued by the assessing officer before passing the impugned order and as such, an application was submitted to the second respondent on January 12, 2008 invoking the provisions of the Right to Information Act, 2005, requesting him to furnish the copies of the demand notices issued and to intimate as to whom the notices issued by the assessing authority were served. However, the second respondent, as per communication dated February 12, 2008, informed the petitioner that the levy of interest was automatic and as such, there was no need to issue a demand notice in form No. 29. Aggrieved by the proceedings of the second respondent dated February 12, 2008, the petitioner preferred an appeal to the first respondent u/s 19(3) of the Right to Information Act, 2005 requesting to issue the copies of the demand. The first respondent, as per proceedings dated March 31, 2008, ordered that there was no requirement to issue form No. 29 or form No. 54 for the purpose of levy of interest under the Tamil Nadu General Sales Tax Act, 1959. However, in the impugned order dated March 31, 2008, the first respondent has incorporated the necessary information sought for by the petitioner. It was the grievance of the petitioner that before passing the impugned order, the documents sought for by the petitioner were not given to them. According to them, the first respondent is also an assessing authority and as such, before passing any orders adverse to the interest of the petitioner, they should have been given notice. It was only from the impugned order, that they came to know of the details and as such, they were precluded from filing their objection before the first respondent. In such circumstances, they have filed the writ petition to quash the impugned order.

4. The second respondent has filed a counter-affidavit, wherein it was indicated that the petitioner had availed interest-free sales tax loan under deferral scheme and as she has repaid the deferral dues beyond the due date for repayment, she was liable to pay the penal interest. According to the second respondent, levy of interest was automatic and as such, there was no question of issuance of notice or giving opportunity to the assessee to submit their objection. In such view of the matter, the second respondent justified the order passed by the said authority and as

confirmed by the first respondent.

5. I have heard Mr. M. Md. Ibrahim Ali, learned Counsel appearing on behalf of the petitioner and Mr. V. Rajasekaran, learned Special

Government Pleader appearing on behalf of the respondents.

6. The second respondent has issued the notice dated December 31, 2007 calling upon the petitioner to pay the interest on account of the belated

payment of deferral dues. There was no indication in the notice dated December 31, 2007 that a prior notice was issued to the petitioner before

quantifying the amount. When the petitioner received the proceedings dated December 31, 2007, they sought details from the second respondent

as per their letter dated January 12, 2008. By way of the said application, the petitioner wanted the second respondent to furnish a copy of the

demand said to have been issued prior to the notice dated December 31, 2007. The said application was duly considered by the second

respondent and it was stated in the order dated February 12, 2008 that as per Section 24(3), no notice need to be issued before calling upon the

assessee to pay interest.

7. Since the second respondent has not complied with the demand made by the petitioner, they filed an appeal before the first respondent on

February 25, 2008. The appeal was under the Right to Information Act and it was not an appeal against the order passed by the second

respondent demanding payment of interest. The information sought for by the petitioner has not been provided by the second respondent.

However, very strangely, by way of the impugned order dated March 31, 2008, all the information sought for by the petitioner was furnished.

However, in the impugned order dated March 31, 2008, the first respondent has stated that notices were issued to the petitioner before passing

the order quantifying interest. But, it was not the case of the second respondent in his order dated February 12, 2008 and the said authority

maintained that there was no requirement to issue notice before quantifying the amount of interest. Section 24(3) mandates that the assessee has to

pay interest, in case the tax amount was paid belatedly. The sales tax amount is admittedly a charge on the property of the defaulter and those dues

would have priority over all the other dues against the property of the assessee. However, before quantifying the interest, principles of natural

justice require that the assessee should be put on notice. Even though the provision does not say that the assessing authority was required to issue

notice before quantifying interest, still the principles of natural justice have to be followed, as any order passed by the assessing authority requiring

payment of interest involves civil consequences to the assessee.

8. In the impugned order dated March 31, 2008, the first respondent has given the break up of the period and the statutory interest for the said

period. In case notice was issued to the petitioner before passing the order by the second respondent, the petitioner would have filed their

objection and after considering their objection, an order could have been passed by the second respondent. The information now given by the first

respondent was, in fact, the very same information which was required to be given to the assessee before passing the order u/s 24(3) of the Act.

Therefore, I am of the view that the very proceeding initiated by the second respondent to recover interest was against the principles of natural

justice.

9. The learned Special Government Pleader would contend that the petitioner has got a statutory remedy of appeal before the appellate authority

against the order passed by the first respondent dated March 31, 2008 and as such, there was no justification for bypassing the alternative remedy.

10. In Committee of Management and Another Vs. Vice Chancellor and Others, , the Supreme Court held that the alternative remedy would not

operate as a bar, when there has been a violation of the principles of natural justice and observed thus:

21. Furthermore, when an order has been passed by an authority without jurisdiction or in violation of the principles of natural justice, the superior

courts shall not refuse to exercise their jurisdiction although there exists an alternative remedy. In this context, it is appropriate to refer to the

observations made by this Court in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, :

15.... But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the

writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principle of natural justice

or where the order or proceedings are wholly without jurisdiction or the vires of

an Act is challenged....

(See also Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others,).

11. While considering Section 16(1)(a) of the Tamil Nadu General Sales Tax Act, 1959, a Division Bench of this Court in SRC Projects (P) Ltd.

v. Commercial Tax Officer [2009] 19 VST 447 : [2008-09] 14 TNCTJ 220 observed that even in the absence of a provision to give a personal

hearing, the sales tax authorities were bound to afford an opportunity of personal hearing, in case a request was made for such hearing.

12. The counter filed by the second respondent clearly shows that no notice was issued to the petitioner before issuing the notice dated December

31, 2007. The respondents sought to justify the order on the ground that the details sought for by the petitioner were given under the Right to

Information Act. In fact, the details were furnished only in the impugned order dated March 31, 2008 and not before. The second respondent has

taken a definite stand in the counter statement that no notice was required to be issued before passing an order u/s 24(3) of the Act for payment of

interest and in fact, no such notice was also issued. In such circumstances, I am of the view that there was a clear violation of the principles of

natural justice and as such, the petitioner was justified in filing the writ petition without filing the statutory revision.

13. The issue could have been resolved long back, in case the second respondent has observed the principles of natural justice by issuing a notice

before passing the order dated December 31, 2007. The information sought for by the petitioner was also given only by the first respondent and

that too, by way of the order in the appeal preferred by the petitioner under the Right to Information Act. On a careful consideration of the entire

matter, I am of the view that the matter requires to be considered by the second respondent afresh.

14. Accordingly, the impugned order dated March 31, 2008 on the file of the first respondent is quashed and the matter is remitted to the second

respondent for fresh consideration. The petitioner is granted four weeks time from the date of receipt of a copy of this order to file their objection

to the notice dated December 31, 2007 and in the event of filing any such objection, the second respondent is directed to consider the objection

and pass fresh orders on merits and as per law.

15. The writ petition is allowed to the extent indicated above. Consequently, the connected miscellaneous petition is closed. No costs.