(2014) 10 MAD CK 0076

In the Madras High Court

Case No : Writ Petition Nos. 28322 to 28324 of 2014 and M.P. No. 1 of 2014

SRC Projects (P) Ltd. APPELLANT

Vs

The Assistant Commissioner (CT) RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:

Tamil Nadu Value Added Tax Act, 2006 — Section 2(11), 2(27)

Citation : (2014) 10 MAD CK 0076

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

Bench : Single Bench

Judgement

T.S. Sivagnanam, J.—In all these three writ petitions, the petitioner has challenged the orders, dated 10.10.2014, which are the orders of assessment under the provisions of the Tamil Nadu Value Added Tax Act, 2006, reversing the ITC availed by the petitioner. Several grounds have been raised by the petitioner in these writ petitions. The primary ground, on which the impugned orders have been challenged, is that the petitioner was not afforded an opportunity of personal hearing.

2. It is an admitted fact that the petitioner submitted a detailed objection. This finds place in the impugned orders of assessment. It is also not in dispute that the petitioner has sought for an opportunity of personal hearing. But, by an erroneous observation in the penultimate paragraph in the impugned orders, the first respondent has not afforded an opportunity of personal hearing stating that if at all a personal hearing is given and the dealers are personally heard, there cannot be any fresh contention to be raised other than raised already in their objection/letter and therefore, there was no valid reason for personal hearing when all the objections were already given in the letter and at best, the dealers would reiterate all these objections again and the request for personal hearing is, no doubt an attempt to delay the assessment proceedings and therefore, the opportunity of personal hearing sought for need not be complied with.

3. In my considered view, the impugned orders are absolutely perverse and the

observations contained therein are against the dictum of the Honourable Division Bench of this Court in the case of the Assessee, reported in 2010 33 ST 333 Madras. The Honourable Division Bench, after taking into consideration the various decisions on this aspect, pointed out that the impugned order by way of revision of assessment, without giving the petitioner an opportunity of personal hearing, is liable to be quashed. The Honourable Division Bench also referred to the circular dated 20.04.2014, which is binding on the respondent and it was observed that Section 16(1)(a) of TNGST Act has to be construed in accordance with the circular issued by the Department which is by way of contemporanea expositio and when a specific demand was made for personal hearing, the reasonable opportunity of showing cause should include the same in the interest of fairness in procedure. Therefore, the observation made by the first respondent rejecting the request for personal hearing, that too while finalizing the revision assessment is all the more arbitrary and unreasonable. Hence, the impugned orders are liable to be set aside. Accordingly, these writ petitions are allowed and the impugned orders are set aside and the matters are remanded to the first respondent for fresh consideration and the first respondent shall afford an opportunity of personal hearing to the petitioner and after hearing the petitioner and perusing the documents produced by the petitioner, shall pass fresh orders on merits and in accordance with law.

4. It is needless to say that since the impugned orders of assessment have been quashed, the first respondent/Assessing Officer has to independently consider the objections filed by the petitioner without being influenced in any manner by the orders passed earlier, which now have been quashed and consider the definition "manufacture" as defined under Section 2(27) read with the definition of "capital goods" as defined under Section 2(11) of the Tamilnadu Value Added Tax Act, 2006, and then pass a reasoned order, on merits and in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.