(2015) 02 MAD CK 0444

In the Madras High Court

Case No : Writ Petition No. 3027 of 2015 and M.P. No. 1 of 2015

Sri Lakshmi Granites and Tiles APPELLANT

Vs

The Assistant Commissioner RESPONDENT

Date of Decision : 06-02-2015

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 54
Tamil Nadu Value Added Tax Act, 2006 — Section 21, 22, 22(4), 81

Citation : (2015) 84 VST 219

Hon'ble Judges : S. Vaidyanathan, J

Bench : Single Bench

Advocate : R. Senniappan, for the Appellant; Manohar Sundaram, AGP (T), Advocates for the Respondent

Final Decision : Disposed off

Judgement

S. Vaidyanathan, J.—Heard the learned counsel for the petitioner and the learned Additional Government Pleader (Taxes) for the respondent.

2. The petitioner has come forward with this writ petition challenging the order of the respondent dated 12.1.2015 and for a direction to the respondent to pass orders afresh in accordance with law after grant of enquiry and opportunity as requested by the petitioner in the representations dated 5.2.2014 and 17.2.2014.

3. Before going into the facts in detail, I feel it necessary to extract below Section 22(4) and Section 81 of the Tamil Nadu Value Added Tax, 2006 (hereinafter referred to as "2006 Act"):-

"Section 22. Procedure to be followed by Assessing Authority:...

(1)....

(4) If no return is submitted by the dealer for that year, the assessing authority, shall, after making such enquiry as it may consider necessary, assess the dealer to the best of its judgment, subject to such conditions as may be prescribed:

Provided that before taking action under this sub-section, the dealer shall be given a reasonable opportunity of being heard.

Section 81: Power to summon witnesses and production of documents:-

(1) An assessing authority, or an appellate or revising authority including the Appellate Tribunal or any officer of the Commercial Taxes Department below the rank of an Assistant Commercial Tax Officer shall, for the purpose of this Act, have all the powers conferred on a Court by the Code of Civil Procedure, 1908 (Central Act V of 1908), for the purpose of -

(a) summoning and enforcing the attendance of any person and examining him on oath or affirmation; and

(b) compelling the production of any document.

(2) Without prejudiced to the provisions of any other law for the time being in force, where a person to whom a summon is issued either to attend to give evidence, or produce account, registers, records or other documents at a certain place and time intentionally omits or fails to attend or produce accounts, registers, records or other documents at such place or time, the authority or officer mentioned in sub-section (1) may, after giving the person concerned a reasonable opportunity of being heard, impose upon him by way of penalty a sum not exceeding rupees five hundred.

(3) Any officer of the Commercial Taxes Department, not below the rank of an Assistant Commercial Tax Officer shall have powers to call for such information, particulars or records as he may require from any person for the purpose of assessment, levy and collection of tax under this Act".

4. According to Section 21 of 2006 Act every dealer registered under the Act shall have to file return, in the prescribed form showing the total and taxable turnover within the prescribed period in the prescribed manner, along with proof of payment of tax. Since, according to the respondent, the petitioner has contravened the said provision, they assessed them as provided under Section 22(4) of the Act. The petitioner has submitted a detailed petition and prayed that the four persons mentioned in the notice dated 31.01.2014 to the Assistant Commissioner to be examined.

5. However, in the impugned order, in page No. 2, the authority has stated that the dealer has not filed any reply or any valid documents in support of business transaction and at page No. 3, the authority proceeded to state that the dealer''s reply was carefully considered and it revealed that they have not furnished any valid documents and since they have not filed any material documents in respect of business transactions, the objections will have to be over ruled. In the next sentence, the authority stated that the petitioner simply filed their objections in writing but he has not produced documents. From the above, it is clear that there are inconsistent versions of the authority, which clearly shows non application of mind.

6. That apart, when a specific request has been made, more particularly when the authority proceeded against the petitioner under Section 22 of 2006 Act, in terms of 22(4) of the said Act, an enquiry or personal hearing is a must and that the petitioner would be entitled to cross examine the persons as in terms of Section 81 of 2006 Act, which is extracted supra.

7. Prior to the introduction of the Act 2006 with effect from 2007, this Court had considered a similar issue with regard to Tamil Nadu General Sales Tax Act in the case of T.M. Rajaganapathi Traders Vs. The Commercial Tax Officer, (2005) 142 STC 130 . Section 54 of the Tamil Nadu General Sales Tax Act is pari materia to Section 81 of 2006 Act. This Court in the above cited decision has held that aggrieved person is entitle to cross-examine and that the authority concerned shall issue summons in terms of the provisions of the said Act.

8. Similarly as per Section 81 of the 2006 Act, the authority is empowered to issue summons to the persons and give an opportunity to the dealer to cross examine them, without which there would be no scope for the authority concerned to rely on the materials for determination of tax liability of the dealer.

9. In view of the above, while setting aside the order impugned in this writ petition, I direct the authority to comply with Section 81 of the 2006 Act in its letter and spirit and before passing final order afresh on merits, an opportunity of being heard apart from asking the petitioner to file objections is mandatory. The respondent shall pass final orders within a period of four months from the date of receipt of a copy of this order. It is made clear that the respondent shall conduct proceedings on a day to day basis if it is required.

The writ petition is disposed of on the above terms. No costs. Connected miscellaneous petition is closed.

