(2009) 10 MAD CK 0333

In the Madras High Court

Case No : Writ Petition No. 16185 of 2009 and M.P. No. 1 of 2009

Sri Sakthi Mills APPELLANT

Vs

Assistant Commissioner (CT) RESPONDENT

Date of Decision : 05-10-2009

Acts Referred:

Citation : (2013) 62 VST 289

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : B. Raveendran, for the Appellant; R. Mahadevan, Additional Government Pleader (Taxes), for the Respondent

Judgement

V. Ramasubramanian, J.—The petitioner has come up with this writ petition, challenging an order of assessment passed on July 7, 2009 under the Tamil Nadu General Sales Tax Act, 1959 for the assessment year 2003-2004. Heard Mr. B. Raveendran, learned counsel appearing for the petitioner and Mr. R. Mahadevan, learned Additional Government Pleader (Taxes) appearing for the respondent.

2. The case of the petitioner is that he is a dealer in edible oil and oil seeds. The petitioner is a registered dealer under the Tamil Nadu General Sales Tax Act 1959 and Central Sales Tax Act, 1956 with effect from May 6, 2003. But the registration was cancelled with effect from April 1, 2004, on account of the failure of the petitioner to file returns. Thereafter, the assessment for the year 2003-04 was finalised on June 18, 2007. However, a reassessment notice was issued on August 13, 2007, alleging that from an extract obtained from Meenakshipuram Check-post, Kerala, the petitioner was found to have effected purchases of palmolein to the tune of Rs. 2,62,71,341 and transported the same to Annur via Meenakshipuram Check-post, without touching the Tamil Nadu check-post. It is the claim of the petitioner that he filed objections on November 22, 2007 to the reassessment notice dated August 13, 2007 and he did not hear anything thereafter. But another notice dated November 3, 2008 was received by the petitioner, alleging that a purchase of palmolein to the tune of Rs. 4,48,495

was also not accounted for. The petitioner claims that in response to this notice, he appeared in person and requested for the details and that without furnishing the details, the impugned order of assessment dated July 7, 2009 was passed. Therefore, challenging the said proceedings, on the ground that the impugned order was passed without furnishing the extracts called for, the petitioner has come up with this writ petition.

3. The respondent has filed a counter-affidavit contending inter alia, that an assessment order was passed originally on November 7, 2007 on best of judgment basis for non-production of accounts, after issuing two notices on June 18, 2007 and August 13, 2007 and after the petitioner failed to file any objections, despite seeking time by a letter dated October 4, 2007. In so far as the impugned order dated July 7, 2009 is concerned, it is the case of the respondent that a pre-revision notice dated December 31, 2008 was issued and served on the petitioner on January 23, 2009 and that the petitioner did not file any objections. The order dated July 7, 2009 was not only sent by registered post but also affixed on July 17, 2009. According to the respondent, the petitioner made a representation dated July 18, 2009, seeking copies of the extracts, only after the order dated July 7, 2009 was passed.

4. In the affidavit filed by the petitioner in support of the writ petition, there is no whisper about any assessment order passed on November 7, 2007 on best of judgment basis. The only assessment order about which the petitioner claims knowledge, is the one dated July 7, 2009 impugned in the writ petition. But as per the counter-affidavit of the respondent, the respondent issued pre-assessment notices dated June 18, 2007 and August 13, 2007, resulting in a best of judgment assessment order dated November 7, 2007. Thereafter, fresh material came to light leading to a pre-revision notice dated December 31, 2008 and an order dated July 7, 2009.

5. In view of the fact that the petitioner feigns ignorance of the first order of assessment dated November 7, 2007, passed on best of judgment basis, I directed the learned Additional Government Pleader (Taxes) to produce the file. Accordingly, the file was produced. The file discloses the following:

(i) A pre-assessment notice dated June 18, 2007 was served on the petitioner on June 20, 2007, as evidenced by the acknowledgement card. This had been sent to the official address at 2/39, Main Road, Kariagoundanur, Vadakkalur Post, Annur. But a copy of the very same notice sent to the "residential address of the proprietor at Karai Road, Allikkarampalayam, returned with the endorsement "insufficient address".

(ii) Another notice dated August 13, 2007 was sent both to the official as well as residential addresses. While the notices sent to the residential addresses returned with the endorsement "no such address", the notice sent to the official address returned with the endorsement "no such addressee".

(iii) However, the petitioner had sent a letter dated October 4, 2007, seeking a month''s time for filing objections. In this letter, the petitioner had indicated the very same official address, viz., 2/39, Main Road, Kariagoundanur, Vadakkalur despite the fact that the notice dated June 18, 2007 sent to the same address returned with the endorsement "no such addressee". In the letter dated October 4, 2007, there is also no indication as to whether it was sent in response to the notice dated June 18, 2007 or to the notice dated August 13, 2007.

(iv) After the expiry of the period of one month sought for by the petitioner by his letter dated October 4, 2007, the respondent had passed an order of assessment on best of judgment basis dated November 7, 2007. The office copy of this order dated November 7, 2007 bears a seal indicating that it was despatched by RPAD on November 22, 2007. A postal receipt bearing the post office date seal of November 23, 2007 is also pasted to the office copy of the order dated November 7, 2007, confirming thereby that the order was actually despatched to the very same address given by the proprietor of the petitioner in his letter dated October 4, 2007.

(v) However the file also contains a report submitted by the Office Assistant to the effect that when he personally went to the residential address given in the letter dated October 4, 2007, he was informed that the petitioner was not available there.

(vi) But interestingly, the petitioner sent a letter dated November 22, 2007, to the respondent, referring to the earlier notice dated August 13, 2007, seeking a copy of the extract of movement register to enable him to file a detailed reply. This letter dated November 22, 2007, is actually in the letter head of the petitioner, giving his address at "2/39, Main Road, Kariagoundanur, Vadakkalur, Annur". It is to this very same address that the notice dated August 13, 2007 was sent, but returned with the endorsement "no such addressee".

(vii) In response to this letter dated November 22, 2007 of the petitioner, the respondent sent a memo dated December 3, 2007, indicating that since an order has already been passed on November 7, 2007, no further action could be taken. This letter sent by RPAD both to the residential address of the proprietor (as given in his letter dated October 4, 2007) and the official address (as contained in the letter head dated November 22, 2007) also returned with the endorsements "address not clear" and "no such addressee", respectively.

(viii) Thus the best of judgment assessment order attained finality, with the petitioner not taking it up. The pre-assessment notices dated June 18, 2007 and August 13, 2007 and the best of judgment assessment order dated November 7, 2007, cannot be said to have been not served on the petitioner, in view of the facts narrated above. From the returned envelops and the endorsements made on them by the Postal Department, it is clear that the communications sent to the very same addresses, as given by the petitioner returned. However, he continued to write letters as and when he liked, from the very same addresses.

(ix) Subsequently, the Deputy Commissioner, brought to the notice of the respondent, another purchase of palmolein that was not brought on record. Therefore, a fresh notice for revision dated December 31, 2008 was issued to the petitioner. Though there is no indication in the file as to how this notice dated December 31, 2008 was sent, it is found from the file that the petitioner sent a letter dated January 23, 2009 to the respondent, seeking a copy of the latest notice sent by the respondent. This letter of the petitioner dated January 23, 2009 is also in the letter head indicating the address as 2/39, Main Road, Kariagoundanur, Vadakkalur. Since this letter, as seen from its contents, was handed over personally by the petitioner to the respondent, the respondent handed over a copy of the notice dated December 31, 2008 to the petitioner and obtained an acknowledgment on January 23, 2009 from the petitioner, with a rubber stamp of the petitioner affixed therein. Therefore, the service of this notice dated December 31, 2008 cannot anymore be disputed by the petitioner.

(x) However, there was no response from the petitioner to the notice dated December 31, 2008, served on him on January 23, 2009, for a period of six months. Therefore, the respondent passed the order impugned in the writ petition dated July 7, 2009. This order was attempted to be served personally on the petitioner, but he appears to have refused to receive it, as seen from the endorsement made in the office copy of the order, by the office assistant on July 17, 2009.

(xi) But after form B-3 and form No. 54 notices were issued, the petitioner had sent a letter dated July 18, 2009, questioning the validity of the second notice dated December 31, 2008 and also feigning ignorance of the developments that took place in the meantime.

6. Therefore it is clear from the facts narrated above, as disclosed by the file produced by the respondent that the petitioner did not challenge the first assessment order dated November 7, 2007 and that he had been successfully dodging service of notices and orders. The order dated July 7, 2009 impugned in this writ petition is only a second revision order, after an additional fact was brought to notice by the Deputy Commissioner. In such circumstances, there is no justification for this court to interfere with the order of assessment dated July 7, 2009, especially when the best of judgment assessment order dated November 7, 2007 has not even been challenged and when the petitioner can never contend violation of natural justice.

7. However, the petitioner has lost the opportunity of filing a statutory appeal against both the orders dated November 7, 2007 and July 7, 2009. Therefore I am of the view that the petitioner can be given an opportunity to file an appeal, since allowing the petitioner to file an appeal, would also ensures the collection of some portion of the tax for the Revenue.

8. Therefore the writ, petition is disposed of, directing the petitioner to file a statutory appeal, within a period of 15 days from the date of receipt of a copy of this order. If the petitioner files a statutory appeal within 15 days from the date

of receipt of a copy of this order, the appellate authority may consider the question of delay sympathetically and pass appropriate orders. It will be open to the petitioner to raise all contentions on the merits in the appeal so filed. The writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

