**(2008) 10 MAD CK 0130**

**In the Madras High Court**

**Case No :** Writ Petition No''s. 12585 and 12586 of 2008 and M.P. No''s. 1 and 1, 2 and 2 of 2008

Subodh Enterprises APPELLANT

Vs

Deputy Commercial Tax Officer RESPONDENT

**Date of Decision :** 30-10-2008

**Acts Referred:**

Sales Tax Act — Section 9(2)
Tamil Nadu General Sales Tax Act, 1959 — Section 16(2)

**Citation :** (2009) 21 VST 458

**Hon'ble Judges :** S. Rajeswaran, J

**Bench :** Single Bench

**Advocate :** R. Venkataraman and S. Lakshmi Sriam, for the Appellant; P. Mahadevan, Additional Government Pleader (Taxes), for the Respondent

# Judgement

S. Rajeswaran, J.—This petition is filed to call for the records from the file of the respondent in CST No. 723635/2001-02 dated March 26, 2008, quash the same, direct the respondent to grant a copy of the Enforcement Wing Report relied on by the respondent in the pre-revision notice dated November 10, 2006 in CST. No. 723635/2001-02, consider the objections filed by the petitioner, grant personal hearing to the petitioner and petitioner''s advocate.

2. The case of the petitioner as per the affidavit is as under:

3. The petitioner is a registered dealer under the provisions of the Tamil Nadu General Sales Tax Act, 1959, and they are dealing in casuarina billets and eucalyptus billets. The respondent passed final orders of assessment under the Central Act, by order in CST. No. 723635/2001-02 and CST. No. 723635/2002-03 on April 25, 2003 and August, 24, 2004, respectively in which after scrutinising the entire document, it was declared by the respondent that the petitioner is not liable to pay any tax other than the tax paid and assessed by the final orders of assessment. However, all of a sudden pre-revision notices dated November 10, 2006, for both the above-said assessment years were issued by the respondent,

wherein the respondent proposed to assess the alleged escaped turnover of sales made to J.K. Paper Mills Ltd., warranting assessment at the relevant rate for Rs. 10,34,74,299 for the assessment year 2001-02 and Rs. 5,68,26,030 for the assessment year 2002-03 together with penalties u/s 16(2) of the Act read with Section 9(2) of the Central Act. The petitioner was directed to file objections within 15 days, on receipt of the said notices. It is stated in the notice that the basis for the notice was the report of the Enforcement Wing Officials. However, no such report of the Enforcement Wing was enclosed. According to the petitioner, the goods were supplied to the purchaser at Orissa, namely, J.K. Paper Mills Limited, and the transport was arranged by the buyers through a separate agency and the transport charges, freight charges and handling expenses were not at all included in the sale price paid to the petitioner but were specifically paid by the outside-State buyer, i.e., J.K. Paper Mills Limited, Orissa to the transporter Balaji Traders after sales were completed. The sale price exclusively charged and agreed to between the petitioner and buyer was charged as shown in the sale bills and subjected to tax properly in accordance with law in the final assessment orders passed by the respondent on April 25, 2003 and August 24, 2004 as referred to above. All the documents pertaining to the transaction that had taken place between the petitioner and the Orissa State buyer were submitted before the authorities. The petitioner sent letters on November 20, 2006 and December 5, 2006 to the respondent explaining the position. The stand of the petitioner was also confirmed by the Orissa State buyer dated December 2, 2006 and December 6, 2006. The respondent by a common notice dated March 22, 2007 required the petitioner to file the copies of the agreement with J.K. Paper Mills Limited, details regarding rate per metric tonne, copy of the sale invoices, within 15 days from the date of receipt of a copy of the said notice to the petitioner. The same was furnished to the respondent during the first week of April 2007 by the petitioner. The petitioner also submitted to the assessing officer/the respondent herein all the material receipt advices for delivering the material to M/s. Balaji Traders at Tamil Nadu as per the advice of J.K. Paper Mills Limited for onward movement to their mills at Orissa. Again, by a letter dated March 20, 2008, the petitioner had reiterated the entire details to the respondent. The Orissa State buyer also had furnished all the documents in respect of the transport made between the petitioner and the State buyer and the receipts paid by them separately to the effect. Unfortunately, the respondent without considering the objections made by the petitioner and the documents furnished by them and also the representation made by the Orissa State buyer and the request made by the petitioner for personal hearing, passed the impugned order on March 26, 2008 confirming the proposal already made on November 10, 2006 and demanded the payment of sales tax with penalty within a specified time. Since those orders passed are ex-facie illegal and not in consonance with the provisions of the Act, they have challenged the same in the writ petition.

4. I have heard the learned Senior Counsel appearing for the petitioner as well as

 

the learned Government Advocate (Taxes) and I have also gone through the documents filed in support of their submissions.

5. The learned Senior Counsel submitted that the impugned order passed by the respondent is contrary to the well-established principles. According to him, though all the details sought for by the respondent during March 2007 have been furnished by the petitioner in the first week of April 2007, without considering the same, orders have been passed, demanding a huge amount of taxes from the petitioner. Moreover, the Orissa State buyer also, according to him, has furnished the details confirming the facts that the transport charges were not included in sales transaction between the petitioner and the State buyer and the Orissa State buyer also furnished those particulars to the respondent-department. Despite that, the respondent has passed orders, which is illegal. Moreover, learned Senior Counsel submits that according to the provisions of law, the respondent is expected to provide personal hearing and the same has not been provided by the respondent-department despite asking for it. Therefore, looking at it from any angle, the demand made by the respondent-department cannot be sustained both in law and on facts. The learned Senior Counsel while referring to a number of judgments annexed in the typed set of papers, referred to the latest judgment made in Veppalodai Salt Corporation Vs. Commissioner of Commercial Taxes and Another, wherein a learned judge of this Court while quashing similar orders passed by the respondent-department issued without affording opportunity of personal hearing to the petitioner/assessee therein, held that non-affording of opportunity of personal hearing has vitiated the proceedings. According to the learned Senior Counsel, the abovesaid judgment should squarely apply to the facts of the present case and in fact this case stands on a better footing as all the details to substantiate their case have been furnished to the respondent-Department. Therefore, according to the learned Senior Counsel the order is liable to be set aside for not affording opportunity of personal hearing.

6. Per contra, learned Government Advocate appearing for the Tax Department submits that the order passed by the Department is valid as sufficient opportunity was given to the petitioner to produce all the documents and only on that basis the orders have been passed.

7. I am unable to accept the submissions made by the learned Counsel appearing for the respondent-Department. A perusal of the impugned order dated March 26, 2008 would show that the respondent-Department has not adverted to the correct facts and referred to the documents furnished by the petitioner as well as the State buyer, J.K. Paper Mills Limited, Orissa, properly. Further, the subsequent request made by the petitioner for granting personal hearing to them and to their advocate were also not considered by the respondent. Therefore, the order passed by the respondent, without considering these aspects, cannot stand the scrutiny of law and as submitted by the learned Senior Counsel the opportunity of personal hearing has not been given to the

 

petitioner. Hence, the impugned order is liable to be set aside and accordingly I set aside both the impugned orders dated March 26, 2008. Liberty is also given to the Department to consider the matter afresh after affording an opportunity of personal hearing and further opportunity to the petitioner to produce all the required documents within a period of six weeks from the date of receipt of a copy of this order. After the documents are produced within the time stipulated above, a personal opportunity of hearing is to be given to the writ petitioner and fresh orders to be passed on merits and in accordance with law within four weeks from the date of receipt of documents from the petitioner.

8. With the above direction, both these writ petitions are disposed of. No costs.

9. Consequently, connected miscellaneous petitions are closed.

 