(2005) 02 MAD CK 0054

In the Madras High Court

Case No : Writ Petition No''s. 2945 and 2946 of 2005 and W.P.M.P. No''s. 3280 and 3281 of 2005

T.M. Rajaganapathi Traders — APPELLANT

Vs

The Commercial Tax Officer — RESPONDENT

Date of Decision : 01-02-2005

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2005) 142 STC 130

Hon'ble Judges : F.M. Ibrahim Kalifulla, J

Bench : Single Bench

Advocate : S. Ramanathan, for the Appellant; M.C. Govindan, Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

F.M. Ibrahim Kalifulla, J.—Challenge in these Writ Petitions is to the order of the respondent dated 28.12.2004 which order has been

passed after an order of remand made by the Appellate Assistant Commissioner (CT), Salem, specifically directing the respondent to provide an

opportunity to cross examine the seller at Bangalore with regard to the alleged purchase of Refined Sunflower Oil for Rs.37,39,000/- during the

year 1993-94 and Rs.9,73,800/- during the year 1994-95. In fact, earlier, when the respondent expressed his inability to summon the concerned

seller at Bangalore, the petitioner approached the Tamil Nadu Taxation Special Tribunal, Chennai, in O.P. Nos.1403 and 1404 of 2003 in which

an order came to be passed on 09.02.2004, holding that the respondent should invoke the powers vested in him u/s 54 of the Tamil Nadu General

Sales Tax Act to summon the seller, namely, one Tvl. KLN Agro Tech (P) Ltd., Bangalore, and grant an opportunity to the petitioner to cross-

examine them as directed by the appellate authority and in accordance with law.

2. Section-54 of the Tamil Nadu General Sales Tax Act discloses that the assessing authority is vested with all the powers conferred on a Court by

the CPC for the purpose of summoning and enforcing the attendance of any person and examining him on oath or affirmation as well as compelling

the production of any document. The said provision also enables the respondent to take action in the event of the summoned person failing to

attend or produce the document called for.

3. I find that the respondent has stated in the order impugned in W.P. No.2945/2005 as under:-

According to the direction of the Appellate Assistant Commissioner (CT), Salem to provide opportunity for cross examination, the seller at

Bangalore was summoned to produce the accounts for cross examination with the dealer to the alleged purchase of Refined Sunflower Oil for

Rs.37,39,000.00 during the year 93-94. The notice issued to the other state dealer was served on 24.03.04 as per this office reference 7th cited.

But the selling dealers has not come forward to appear in this office along with their account and they have not co-operated with the department

for cross examination. In the circumstances, there is no other alternative except to pass orders with reference to the available materials on hand.

4. The above extracted portion of the impugned order only discloses that the respondent was not inclined to exercise all the powers that are vested

in him u/s 54 of the Tamil Nadu General Sales Tax Act. The respondent was rest content with merely issuing the summons and stating that since

the concerned dealer failed to appear, he had no other alternative except to pass orders based on the available materials on hand. The respondent

failed to realise that in the event of such helplessness being recorded by the respondent, at best, he could not have relied upon any of the materials

which were relatable to the said dealer for the purpose of determining the tax liability on the petitioner. In other words, in the absence of the

concerned dealer being examined, it would not be proper for the respondent to rely on those materials to fasten the liability on the petitioner.

5. In such circumstances, there is no other go except to set aside the orders impugned in these writ petitions and direct the respondent to hold the

proceedings afresh, exercising all the powers that are vested in him u/s 54 of the Tamil Nadu General Sales Tax Act in order to ensure the

presence of the dealer concerned for being offered for cross examination by the petitioner, without which, there would be no scope for the

respondent to rely on the materials relating to the said dealer for determination of the tax liability on the petitioner. It is open to the respondent to

pass orders afresh by complying with the provisions contained in Section 54 of the Tamil Nadu General Sales Tax Act.

6. Writ Petitions are disposed of accordingly. No costs. Connected Miscellaneous Petitions stand closed.