(2015) 12 MAD CK 0035

In the Madras High Court

Case No : W.P. Nos. 36907 to 36911 of 2015 and M.P. Nos. 1 of 2015

Tvl. Sri Ram Trading Company — APPELLANT

Vs

The Assistant Commissioner (CT) — RESPONDENT

Date of Decision : 07-12-2015

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2015) 12 MAD CK 0035

Hon'ble Judges : R. Mahadevan, J.

Bench : Single Bench

Advocate : R. Senniappan, for the Appellant; S. Kanmani Annamalai, AGP, for the Respondent

Judgement

R. Mahadevan, J.—Heard the learned counsel appearing for the petitioner and Mr. S. Kanmani Annamalai, learned Additional Government Pleader for the respondent.

2. These writ petitions are filed under Article 226 of the Constitution of India challenging the orders of the respondent in TIN. No. 33092842821/2011-12, 2013-14, C.S.T. No. 781373/2012-13, 2013-14 and TIN. No. 33092842821/2012-13 respectively dated 6.10.2015.

3.1 The petitioner is a registered dealer in edible oil and assessee on the files of the respondent herein. On 13.08.2013, an inspection was conducted by the Enforcement Wing Officials, during which time, the proprietor was not available. Based on the report of the Enforcement Wing Officials, impugned orders of assessment came to be passed. According to the petitioner, the only allegation levelled against the petitioner was that the petitioner should have produced the books of accounts before the Enforcement Wing Officials and not before the assessing authority.

3.2 According to the petitioner, immediately on receipt of the pre-assessment notices dated 11.02.2014, detailed replies along with month-war statement showing proof of CST sales turnover, exempted turnover, balance sheet, purchase turnover and the amount of VAT paid as well as CST sales tax amount paid and corresponding ledger folio including declarations in support of their claim for exemption under CST Act were filed on 25.02.2014. However, without considering the same, simply stating that the proposal contained in the notices is hereby confirmed, the assessment orders came to be passed, which are violative of principles of natural justice.

3.3 Further, according to the petitioner, insofar as the assessment year 2011-12 is concerned, even after request for perusal of books of accounts, the respondent was not inclined to peruse the same by stating that they should have produced the books of accounts before the Inspection Officials and therefore their request is not accepted. Likewise, for the assessment year 2012-13 also, assessment was completed on the ground that the petitioner should have produced the books of accounts before the Enforcement Officials and not before him. Insofar as order passed under CST Act for the assessment year 2013-14 is concerned, confirmation of proposal was made on the ground that the petitioner had not produced the declarations and related documents and therefore, the claim of exemption on consignment sale transaction was disallowed. According to the petitioner, the respondent, being a quasi judicial authority, is expected to consider the objection and enclosures before passing the impugned orders of assessment. Hence, the impugned assessment orders are nothing but confirmation of VSI-3 proposal. Aggrieved over passing of the assessment orders, the petitioner is before this Court.

4.1 The learned counsel for the petitioner would submit that the impugned orders are liable to be set aside as being contrary to the principles laid down by this Court in the Judgment reported in

"(i) Madras Granites (P) Ltd. Vs. Commercial Tax Officer and Another, .

(ii) Steel Authority of India Ltd. Vs. Sales Tax Officer, Rourkela-I Circle and Others, .

(iii) Amutha Metals Vs. The Commercial Tax Officer, .

(iv) Tvl. Narasus Roller Flour Mills Vs. The Commercial Tax Officer--> ."

4.2 Further, according to the learned counsel for the petitioner, the impugned orders are liable to be set aside as being "non speaking orders", which were passed without application of mind. That apart, according to the learned counsel for the petitioner, the respondent, being a quasi judicial authority, ought to have considered the materials independently and come to his own conclusion in the orders of assessment. However, in the impugned orders, the manner in which the proceeding completed clearly indicate the fact that the respondent might have received the VSI -3 proposal and implemented as such and therefore, the impugned orders are liable to be quashed. The learned counsel for the petitioner would further submit that the assessing authority is duty bound to consider the books of accounts as well as the documents produced by the petitioner without being influenced by any of the findings given by the Enforcement Wing Officials. Hence, non consideration of the books of accounts produced by the petitioner before the respondent vitiates the entire proceedings and therefore the assessment orders are bad in law.

5. On the other hand, the learned Additional Government Pleader submitted that the petitioner had not produced any of the documentary evidences before the Enforcement Wing Officials. He also fairly submitted that the petitioner subsequent to the inspection produced records before the respondent/Assessing Authority, however, the respondent did not consider the same.

6. This Court considered the submissions made by the learned counsel on either side and perused the materials available on record.

7. For the assessment years in question, proposing tax liability, notices were issued on 11.02.2014, for which, the petitioner filed replies on 25.02.2014. The main allegation levelled against the petitioner by the respondent is that they did not produce any of the records and documents when the inspection was conducted by the Enforcement Wing Officials. According to the respondent, the inspection was conducted on 05.08.2013, on which date, no document was produced. The only reason given by the petitioner was that on such date the proprietor was not available and sought time for filing documentary evidences. Subsequently, the petitioner produced the books of accounts to the respondent, but the same was treated as fictitious, fabricated and only to overcome the burden of tax liability, the same were produced. Accordingly, the impugned orders came to be passed. In the case of Madras Granites (P) Ltd. Vs. Commercial Tax Officer and Another, , a Division Bench of this Court made it very clear that when records are produced before the authority concerned, the same should be considered by the authority concerned and by applying his mind independently in the issues related to the assessment, should pass appropriate orders, after affording due opportunity.

8. At this juncture, it is relevant to extract below the operative portion of the said Judgment:--

"4. No doubt, the assessing officer issued pre-assessment notice including the notice for levy of penalty calling for objections from the dealer and after receiving reply from the dealer, completed the assessment on the basis of D-3 proposal forwarded by the Assistant Commissioner (CT), Enforcement. We find from the records that in D-3 proposal, the Deputy Commissioner (CT) Enforcement, Salem, has not only determined the surplus turnover, but also determined the quantum of penalty that might be imposed on the dealer. Therefore, when the higher officer viz., the Assistant Commissioner (CT), Enforcement, has directed the assessing officer to complete the assessment on the basis of the proposal in D-3 form, we find that the assessing officer, who is lower in rank in the hierarchy of officers, is bound by the said direction, and the records also show that the assessing officer has not independently applied his mind, but adopted the sales turnover as found in D-3 proposal and also levied the penalty in the manner indicated in D-3 proposal. It is well settled that the assessing officer is a quasi-judicial authority and in exercising his quasi judicial function of completing the assessment, he is not bound by the instructions or directions of the higher authorities. We find that in both the matters the assessing officer has acted on the basis of the directions of his higher authority in completing the assessments. We hold that the assessments are not sustainable in law. Accordingly, the orders of assessment in both the matters are liable to be quashed and consequently, the orders of the Special Tribunal confirming the orders of assessment are also liable to be quashed. However, it is open to the assessing officer, viz., the first respondent herein, to pass orders of assessment afresh in accordance with law, after giving an opportunity to the petitioner. Both the writ petitions stand a lowed. No costs. Connected WPMPs are closed."

9. Admittedly, in the cases on hand, the documents were produced before passing assessment orders and the same were not considered. Hence, the impugned orders are liable to be set aside and accordingly, the same are set aside. The matters are remitted back to the respondent for passing fresh orders after verifying the books of accounts, considering the objections and after affording an opportunity of being heard. The said exercise shall be completed within six weeks from the date of receipt of a copy of this order. The writ petitions are disposed of accordingly. No costs. Connected miscellaneous petitions are closed.