(2007) 09 MAD CK 0224

In the Madras High Court

Case No : Writ Petition (MD) No''s. 6794 and 6795 of 2007 and M.P. (MD) No. 1 of 2007

V. George Vincent APPELLANT

Vs

Deputy Commercial Tax Officer RESPONDENT

Date of Decision : 05-09-2007

Acts Referred:

Citation : (2008) 14 VST 60

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : Aparna Nandakumar, for the Appellant; Pala Ramasamy, Special Government Pleader, for the Respondent

Judgement

V. Ramasubramanian, J.—Notices were issued by the respondent on September 12, 2005, proposing to assess the petitioner to tax on the basis of best of judgment, for the assessment years 1999-2000 and 2000-01, after a report from enforcement wing officers of the department. The petitioner submitted separate replies on September 28, 2005. Thereafter the respondent passed two separate assessment orders dated June 29, 2007 demanding payment of tax as well as imposing a penalty of 150 per cent of the tax demanded. Challenging these assessment orders the petitioners have filed the present writ petitions.

2. Heard Mrs. Aparna Nandakumar, learned Counsel appearing for the petitioner and Mr. Pala. Ramasamy, learned Special Government Pleader appearing for the respondent.

3. There is no dispute about the fact that the certificate of registration of the petitioner was cancelled with effect from April 1, 1994. There is also no dispute about the fact that the petitioner surrendered the unused "C" forms on February 11, 1999.

4. It appears that a Central Bureau of Investigation (CBI) enquiry was initiated against a dealer by name M/s. Bee Am Chemicals, Shri Lalit Nagapal and Shri

Anil Nagpal and others, in respect of certain fraudulent transactions. The Central Bureau of Investigation (CBI) also issued summons to the petitioner to produce the documents.

5. The Central Bureau of Investigation (CBI) enquiry against the aforesaid company led to the enforcement officials initiating action against the petitioner which resulted in a notice and ultimately the final assessment orders. In response to the pre-assessment notice, the petitioner submitted a reply dated September 28, 2005 claiming that his company was closed and that the certificate of registration itself was cancelled on April 1, 1994. But the respondent overruled the objections on the ground that the petitioner had not disputed the inter-State purchases.

6. Under identical circumstances, another dealer by name M/s. G.K. Chemicals, Rajapalayam, who was also enquired by the Central Bureau of Investigation (CBI) in relation to these transactions that the Bombay dealer had, came up before this Court in W.P. No. 6489 of 20071. The grievance of the petitioner in that case was that he was not given the copies of documents and adequate opportunities of hearing. The said writ petition was disposed of by an order dated August 10, 2007, the operative portion of which reads as follows (at page 90):

6. Therefore, the writ petition is ordered setting aside the impugned order and directing the second respondent to provide the copies of whatever documents he has in his possession for passing the order impugned in the writ petition, to the petitioner within a period of two weeks. If the second respondent is not in possession of any of the documents, the second respondent shall also intimate the same to the petitioner. In other words, the second respondent shall send a letter to the petitioner enlisting the list of documents available with him and enclosing the copies of such documents which form the basis of his impugned order.

7. After forwarding such a letter enclosing copies of the available documents, the second respondent shall give an opportunity to the petitioner to challenge those documents in accordance with law and thereafter, pass fresh assessment orders.

7. Though the petitioner in this case did not seek copies of the documents relied upon by the respondent, the petitioner has stated that he closed his business in the year 1990 and the certificate of registration was also cancelled on April 1, 1994. Therefore, the conclusion reached by the respondent that the petitioner did not deny the inter-State purchases, does not appear to be correct. A person who claims that there were no transactions at all, should be deemed to have denied the allegations of inter-State purchases also.

8. Under such circumstances, following the earlier order passed, which also arose as a result of the Central Bureau of Investigation (CBI) enquiry against the very same Bombay party these two writ petitions are also disposed of setting aside the impugned order and directing the respondent to provide the copies of whatever documents he has in possession for passing the order impugned in the

writ petition, to the petitioner within a period of two weeks. If the second respondent is not in possession of any of the documents, the second respondent shall also intimate the same to the petitioner.

9. In other words, the second respondent shall send a letter to the petitioner enlisting the list of documents available with him and enclosing the copies of such documents which form the basis of his impugned order. After forwarding such a letter enclosing copies of the available documents, the second respondent shall give an opportunity to the petitioner to challenge those documents in accordance with law and thereafter, pass fresh assessment orders. No costs. Consequently, connected M.P. No. 1 of 2007 in both the writ petitions are closed.

