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(2014) 10 MAD CK 0210

In the Madras High Court

Case No : Writ Petition Nos. 27221 and 27222 of 2014 and M.P. Nos. 1 and 1 of 2014

VTX Industries Limited — APPELLANT

Vs

The Assistant Commissioner (CT) — RESPONDENT

Date of Decision : 14-10-2014

Acts Referred:
Tamil Nadu Value Added Tax Act, 2006 — Section 16(1)(a)

Citation : (2014) 10 MAD CK 0210

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Judgement

T.S. Sivagnanam, J.—The petitioner is a registered Dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006.

2. These writ petitions have been filed challenging the order of assessment for the Assessment Years 2007-08 and 2008-09.

3. Mr. N. Prasad, learned counsel for the petitioner primarily challenged the impugned order on the ground that the petitioner''s Form-S Certificates were not considered by the authority, prior to passing the final order in respect of both assessment years while issuing notices dated 12.11.2013 and 20.11.2013 respectively. One of the allegations in the show cause notice was that on the verification of Annual Reports and other details for the relevant assessment year, it was observed that there are additions in the category of ''Buildings'', but, the petitioners have not produced any connected records for the building constructions and TDS details of Certificate in Form-S. Therefore, TDS liability was toto. Apart from the said allegation, there are other allegations in the notice, apart from a proposal to levy the penalty. The petitioner was granted 15 days'' time to submit its objections. While submitting its objections, the petitioner submitted that the Contractor has paid the Tax due on the contract receipts and reported to the Sales Tax Department through the monthly sales tax returns filed at the Trichy Road Circle, Coimbatore and copy of monthly returns and tax paid

certificate were enclosed along with reply. Further, the petitioner produced a copy of the ledger account and purchases bills for verification. The petitioner specifically sought for an opportunity of personal hearing. Admittedly, the opportunity of personal hearing was not granted to the petitioner and the respondent finalised the assessment by the impugned proceedings. After the proceedings were issued, the petitioner submitted a representation dated 20.09.2014, stating that the assessment order states that the petitioner has not produced the relevant certificate for payment of taxes for the Contractor, which they had produced for perusal at the office of the respondent at the time of assessment and after perusal, it was returned to the petitioner and enclosed the relevant Form-S certificate dated 18.05.2009, which shows the payment of Tax by the Contractor. The said communication was sent by Registered Post to the respondent on 26.09.2014. However, till date, the respondent has not considered the same which necessitated the petitioner to approach this Court.

4. Heard the learned Additional Government Pleader on the above submissions.

5. Admittedly, in the reply given by the petitioner, he has specifically taken a stand that Contractor has paid the tax due on the contract receipts and reported to the Sales Tax Department through the monthly sales tax returns filed at the Trichy Road Circle, Coimbatore and copies of the monthly returns and Tax receipts were enclosed along with the reply on 21.01.2014. Further, it was stated that the balance amount relates to the purchase of materials for the constructions of buildings, the question of deduction of tax at source does not arise. The petitioner produced a copy of the ledger account and purchase bills along with the reply to the show cause notice. If the respondent had afforded an opportunity of personal hearing to the petitioner, this could have been sorted out then and there and it would have complied with principles of natural justice as well the statutory requirement. The Honourable Division Bench of this Court, in the case of SRC Projects Private Limited vs. Commissioner of Commercial Taxes, Chennai and another, reported in 2010 (33) VST 333 (Mad), held that in a case where the question involved was one of determination of certain factual disputes which were a bit complex and not free from controversy the principles of fairness would encompass personal hearing within the concept of reasonable opportunity to show case under Section 16(1)(a) of the Act. Further section 16(1)(a) of the Act had to be construed in accordance with the circular dated April 20, 2001 providing for oral hearing where the dealer demanded it by way of contemporanea exposition.

6. In the light of the above decision, it is necessary for the respondent to afford an opportunity of personal hearing, more particularly, when the petitioner was in possession of Form-S and has specifically stated that the Contractor has paid tax. Further, it is to be noted that the Principal Secretary/Commissioner of Commercial Taxes, Chennai, by circular No. 7/2014, dated 03.02.2014, has issued guidelines and circular instructions to be followed while passing orders of assessment or revision of assessment, etc. Clause 3(a)(iii) of the said circular

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would be relevant for the purpose of this case and it reads as follows:

As per the provision in the TNVAT Act stipulates the conditions of granting or personal hearing. It may be intimated in the notice and it shall invariably be afforded to the dealer irrespective of whether the dealer has opted for personal hearing on not.

The circular guidelines issued by the Commissioner of Commercial Taxes, was in vogue on the day, when the impugned proceedings were passed and the respondent ought to have adhered to the guidelines stipulated by the Commissioner. Without doing so and without affording an opportunity of personal hearing, the impugned proceedings have been issued.

7. In the light of the above, the impugned proceedings are held to be bad in law. Accordingly, the impugned proceedings are quashed and the matters are remanded back to the respondent for fresh consideration and to afford an opportunity of personal hearing to the petitioner and to consider the Form-S produced by the petitioner and thereafter, to pass fresh orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.

8. Accordingly, both the writ petitions are allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

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