(2007) 08 MP CK 0108

In the Madhya Pradesh High Court

Yuvaraj Merch-X APPELLANT

Vs

Commercial Tax Officer RESPONDENT

Date of Decision : 10-08-2007

Acts Referred:

Citation : (2009) 21 VST 38

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S. Manikumar, J.—The petitioner is engaged in the business of purchase and sale of scientific equipment, conversion of cotton hosiery yarn into cloth upon receiving knitting charges and also manufacturing hosiery garments by paying stitching charges for export. They are registered as dealers on the file of the respondent under the provisions of both the Tamil Nadu General Sales Tax Act, 1959 and Central Sales Tax Act, 1956. That apart, the petitioner is a sales agent of Pailung Machinery Mill Co. Ltd., Taipei, Taiwan, who is a manufacturer of textile machines, parts and accessories and an agent of Paramount Scientific Instrument Co. Ltd., who is a manufacturer of scientific instruments. Originally, the respondent has assessed the tax for the assessment year 2003-04 and determined a total and taxable turnover of Rs. 51,22,919 by accepting the returns filed by the petitioner.

2. Thereafter, the enforcement wing officials conducted an inspection on September 15, 2004 in petitioner''s business place and found that they have paid only sales tax at four per cent on the sale of imported machinery spares, which actually attracts sales at 20 per cent. The petitioner admitted the defect and agreed to pay the difference due thereon. Further, the inspecting officials enquired about the nature of business activities being carried on by the petitioner and also obtained a sworn statement in this regard. Subsequently, the petitioner was shocked to receive a revision notice dated February 14, 2007 from the respondent, proposing to revise the assessment for the year 2003-04, based on

the D3 proposals submitted by the enforcement wing officials, alleging that the enforcement wing officials had found the managing partner of the petitioner has announced in "The Hindu" newspaper dated December 6, 2004, that they have sold 110 numbers of knitting machines during 2003-04. But actually, the petitioner had acted as an agent for commission, in respect of selling of 110 numbers of knitting machines.

3. The petitioner has further submitted that based on the news item, the respondent has proposed to revise the assessment u/s 16 of the TNGST Act and issued the impugned show-cause notice dated February 14, 2007, which contained following defects and omissions:

1. The dealers are importers of point motor, steel-wire bearing and tools. They effected sale of these goods as local first sales and paid four per cent tax and five per cent surcharge. This is not correct since, it is an imported goods the tax at 20 per cent to be paid on this sales. The sales suppression found during inspection is to be paid on this sales. The sales suppression found during inspection is Rs. 19,000. This is proposed to be assessed at 20 per cent tax and five per cent surcharge. The dealers have also admitted this defect and paid tax due thereon on the spot itself.

2. Thiru. M.M. Elangao, the Managing Director of the concern has announced in The Hindu paper on December 6, 2004 that they have sold 110 Nos. of knitting machines during the year 2003-04. This aspect has been considered with the accounts of the dealers during inspection and found that the dealers have explained the machineries were dispatched by the foreign sellers to the customers whose orders were booked by this dealer as agent. But, the dealers have failed to prove their contentions that they are only the agents and the goods despatched were not sold by them, but received by them in favour of their customers as agents. This fact had led to the conclusion that the dealers have purchased and sold the knitting machine but, pretended to be acting as an agent for their customers for commission. Hence the 110 Nos. of machines sold are treated as suppression. The cost of knitting machine as per pro forma invoices range from 30,000 to 60,000 US dollars. So the average cost of the machine is considered as Rs. 40,000 US dollars (INR Rs. 18,00,000.00).

4. By the show-cause notice, the respondent has proposed to revise the taxable turnover at Rs. 19,80,19,000 at 20 per cent, besides levying penalty at 150 per cent. Aggrieved by the same, the petitioner has preferred this writ petition seeking for a writ of certiorari to quash the revision notice of the respondent, dated February 14, 2007.

5. The learned Counsel for the petitioner submitted that the respondent has materially extracted the D3 proposals forwarded by the enforcement wing officials, without an independent application of mind. He further submitted that the defects allegedly pointed by the enforcement wing officials for the sale suppression of 110 numbers of knitting machines is not at all referred to or found

either in the inspection notes or in the statement recorded from the petitioner at the time of inspection. He further submitted that the statement recorded from the petitioner disclosed only his business activity and agency of an overseas principal, and there was no incriminating material. Placing reliance on the decision of this Court in Madras Granites (P) Ltd. v. Commercial Tax Officer reported in [2006] 146 STC 642, learned Counsel submitted that the assessing officer being a quasi-judicial authority, is not bound by the instructions or directions of the enforcement wing and in the instant case, the show-cause notice issued by the respondent is nothing but an extraction of D3 proposals. He further submitted that there cannot be any notice to revise the assessment on the basis of newspaper report and under such circumstances, prayed this Court to set aside the impugned notice passed by the respondent.

6. R. Mahadevan, learned Additional Government Pleader, on instructions, submitted that the revision notice dated February 14, 2007 was issued consequent to the inspection of the business premises and examination of the records recovered from the place of business of the petitioner and quoting the news item in the show-cause notice is only an additional information. He further submitted that in addition to the materials, the news item published in The Hindu newspaper, on December 6, 2004 regarding sale of 110 numbers of knitting machines during 2003-04, was also taken into consideration, while issuing the show-cause notice and prima facie it was found that the petitioner had purchased the said knit machines and sold the same, pretending to be an agent to their customers for commission.

7. A perusal of the revision notice discloses that the petitioner is not provided with reasonable opportunity to put forth his case. It is settled law that if any irregularities, commissions or defects or violations of law are noticed by the respondent, the assessee should be given adequate opportunity of rebutting the allegations made against them with supportive documents. In the instant case, as the impugned notice is bereft of all the details and records said to have been recovered and formed the basis of the show-cause notice, it may not be possible for the petitioner to effectively defend the show-cause notice. Under such circumstances, the impugned show-cause notice is liable to be set aside and accordingly, it is set aside. However, it is open to the assessing officer to issue a fresh show-cause notice to the petitioner containing all the details of records recovered from the business premises, within three weeks from the date of receipt of a copy of this order. On receipt of the notice, it is open to the petitioner to seek copies of such records, and upon receipt of the copies of records, the petitioner shall submit their objections within the time, as fixed by the assessing officer.

8. With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is also closed.

