IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.2.2016

CORAM

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P.Nos.17751 to 17755 of 2008,
M.P.No.1 of 2008 and
M.P.Nos.2, 2, 2 and 2 of 2008

S.Rajamani Nadar ... Petitioner

Versus

1. The Secretary,
   Sales Tax Appellate Tribunal,
   Additional Bench,
   Coimbatore.

2. The Deputy Commercial Tax Officer
   (Enforcement-II)
   Dr.Balasundaram Road, Coimbatore. ... Respondents

Prayer: Writ petitions filed under Article 226 of the Constitution of India calling for the records of the 1st Respondent-Appellate Tribunal passed in CTSA Nos.337/2002, 336/2002, 339/2002, 340/2002 and 338/2002 dated 28.02.2007 pertaining to the assessment year 1983-84, 1984-85, 1986-87, 1982-83 and 1985-86 respectively, quash the same as illegal and contrary to the provisions of Law.

For petitioner : Mrs.R.Hemalatha

For R2 : Dr.Anita Sumanth,
Special Government Pleader (Taxes)

ORDER

(Order of the court was made by V.RAMASUBRAMANIAN, J.)

These writ petitions arise out of the orders passed by the Tamil Nadu Sales Tax Appellate Tribunal, reversing the orders of the Appellate Commissioner and restoring the orders of the assessing officer.

2. Heard Mrs.Hemalatha, learned counsel appearing for the petitioner and Dr.Anita Sumanth, learned Special Government Pleader appearing for the respondent.

3. The appellant was a dealer registered under the Tamil Nadu General Sales Tax Act, 1959 and also under the Central Sales Tax Act, 1956. He was a dealer in pulses and grams.

4. It appears that the Enforcement Wing Officers of the State of Tamil Nadu were deputed to the State of Andhra Pradesh to collect details of certain transactions effected by certain dealers inside the State with the dealers in Andhra Pradesh. On the basis of the information furnished by them, an inspection of the business premises of the petitioner was conducted in September/October 1987.

5. On the basis of the inspection, revision notices were issued for the assessment years 1982-83 to 1986-87. The petitioner filed his objections denying the charges and also seeking copies of the bills allegedly produced by the Andhra Pradesh dealers.

6. Thereafter, the petitioner filed writ petition in W.P.No.4632 of 1988 on the file of this court seeking copies of documents as well as information. The said writ petition was disposed of by an order dated 21.4.1988 directing the Deputy Commercial Tax Officer to comply with the principles of natural justice and provide all information and extracts of documents.

7. However, the assessing officer confirmed the proposals by passing revised assessment, by independent orders dated 31.8.1988 in respect of the five assessment years.

8. Challenging these orders, the assessee moved a batch of writ petitions in W.P.Nos.12078 to 12091 of 1988. These writ petitions were transferred to the file of the Tamil Nadu Taxation Special Tribunal. In the meantime, the petitioner had also filed appeals before the appellate authority. Therefore, the Tribunal disposed of the transfer petitions with a direction to the appellate commissioner to dispose of the appeals within a time frame.

9. Ultimately, the Additional Appellate Assistant Commissioner allowed the appeals by a common order dated 4.12.2001 on the ground that the principles of natural justice stood violated. As against the said order, the State preferred

further appeals to the Tamil Nadu Sales Tax Appellate Tribunal in C.T.S.A.Nos.336 to 340 of 2002. These appeals were allowed by the Tribunal by a common order dated 28.2.2007. As against the said order, the assessee is before us.

10. On the question of violation of principles of natural justice, the Appellate Commissioner found that neither the dealers from Andhra Pradesh could be produced for cross-examination by the assessee nor the basic records were produced for perusal.

11. But, unfortunately, the Tribunal held that even the summoning of the dealers from Andhra Pradesh was sufficient compliance with the principles of natural justice irrespective of whether they appear or not. The relevant portion of the order of the Tribunal in this regard is found in para 12 which we extract as follows:-

> "12. On the directions of th Hon'ble High Court of Madras, the Assessing Authority had issued notice to the Andhra Pradesh dealers for cross-examination of the Andhra Pradesh dealers. But, they had not responded to the notice or the summons by presenting themselves with the relevant account but rebutted by saying that the Hon'ble High Court had not directed the Andhra Pradesh dealers to appear before the Enforcement Wing Officers for cross-examination and moreover the Enforcement Wing Officers have no jurisdiction to summon those dealers. As the other State dealers had not come forward for cross-examination as per the directions given by the Hon'ble High Court to grant opportunity to the dealer, the dealers having come forward for making of assessment, the assessment had been completed by the Enforcement Wing Officers. Here, the Enforcement Wing Officers have clearly complied with the directions of the Hon'ble High Court and they have given opportunity and they have summoned the Andhra Pradesh dealers for cross-examination by the dealers at this end. But the Andhra Pradesh dealers had not come forward citing the jurisdictional point. So, the question of negation of natural justice does not arise. But, at the same time the duty that was cast on the Assessing Officer namely, the Enforcement Wing Officers had been complied with. Whether the dealer had complied with the directions of the Hon'ble High Court has to be seen. The Hon'ble High Court did not leave with the direction to the Assessing Authority to grant an opportunity to cross-examine the Andhra Pradesh dealers but had also given a direction to the dealer to co-operate with the Department."

12. We are afraid that the above view is completely contrary to law. The assessee cannot be made to defend an allegation made on the basis of the extracts of certain records taken by the Enforcement Wing Officers without the basic records being produced. Therefore, the finding of the Tribunal that there was compliance with the principles of natural justice cannot be accepted. Hence, the writ petitions are allowed. The impugned orders are set aside. No costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssk.

To:

1. The Secretary,
   Sales Tax Appellate Tribunal,
   Additional Bench, Coimbatore.

2. The Deputy Commercial Tax Officer
   (Enforcement-II)
   Dr.Balasundaram Road, Coimbatore.

3. The Section Officer,
   VR Section,
   High Court, Madras. [01/06/2016]

+5cc's to Mrs.R.Hemalatha, Advocate, S.R.No.11460
+1cc to the Special Government Pleader(T), S.R.No.11643

W.P.Nos.17751 to 17755 of 2008

SAI(CO)
CA(31/03/2016)