IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.07.2017

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.21030 of 2004
and
W.P.M.P.No.25328 of 2004

Bata India Limited,
829, Anna Salai,
Chennai - 600 002. ...Petitioner

Vs.

The Assistant Commissioner, (CT) Zone IX,
Greams Road, Chennai - 6. ...Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorai, calling for the records of the case on the file of the respondent herein in CST No.10950/1999-2000, dated 30.06.2004, relating to the petitioner made under Section 9 (2) of the Central Sales Tax Act, 1959 and quash the same.

For Petitioner : Mr.P.Sivaraman
for M/s. R.V.Chitra Associates

For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.P.Sivaraman, the learned counsel for M/s.R.V.Chitra Associates, the learned counsel for the petitioner, and Mr.K.Venkatesh, the learned Government Advocate for the respondent.

2. The petitioner has challenged the assessment order issued by the respondent, under the provisions of the Central Sales Tax Act, 1956, for the year 1999-2000, dated 30.06.2004.

3. The only ground on which, the petitioner has challenged the assessment order, is by contending that, it is in violation of principles of natural justice, as opportunity was not given to the petitioner to produce documents.

4. The respondent issued a notice, dated 16.02.2004, proposing to assess the petitioner, for the assessment year 1999-2000, on the grounds set out in the notice. The petitioner filed their objections/replies to the notice on 27.02.2004, 03.03.2004 and 29.03.2004. After receiving replies from the petitioner, the respondent issued a revised pre-assessment notice, dated 25.05.2004, pointing out certain other details, and directed the petitioner to submit their objections within a period of 10 days from the date of the receipt of the said revised pre-assessment notice, dated 25.05.2004. On 03.06.2004, the petitioner submitted a representation/letter to the respondent, stating that, they have received the revised pre-assessment notice, and that, they have been granted only 10 days time for filing objections, since their Zonal Office has been shifted to Gurgaon (Haryana), all the documents are available in the said Office, and therefore, requested for further four weeks' time for arranging all required documents, and to file their objections. This representation/letter was handed over in the Office of the respondent, in person, and an endorsement has been made in the Letter Delivery Book, which shows that the letter, dated 03.06.2004, has been received in the Office of the respondent on 11.06.2004. However, the respondent, in the meantime, completed the assessment, stating that, no objections were filed by the petitioner.

5. In the parawise comments given by the respondent to the learned Special Government Pleader (Taxes), High Court, Madras, dated 20.08.2008, a stand has been taken, stating that, there is no letter seeking time was received by the Office of the respondent.

6. Firstly, it has to be noted that, to the first notice, dated 16.02.2004, the petitioner has submitted replies, dated 27.02.2004, 03.03.2004 and 29.03.2004. It is only thereafter, the respondent issued the revised pre-assessment notice, dated 25.05.2004. In such circumstances, bona fide of the petitioner cannot be doubted, and the respondent/Assessing Officer ought to have granted reasonable time to the petitioner, especially, when the matter has been pending from February, 2004, that too, pertaining to the assessment year, 1999-2000. In order to avoid such arbitrary exercise of power, the Commissioner of Commercial Taxes has issued a circular, dated 20.04.2001, stating that the Assessing Officer should give reasonable time to the assessees to file their objections, and if time is asked for on reasonable grounds, it should be allowed.

7. In the instant case, the petitioner has stated in his representation / letter to the respondent that, their Zonal Office has been shifted to Gurgaon (Hariyana) and all the documents are available in the said Office, and requested for

further four weeks' time to produce the same. The respondent cannot disbelieve the said request, nor, there was any material available with the respondent, to come to conclusion that the statement of the petitioner was false. These observations are made in this order, to hold that the letter, dated 03.06.2004, has been received in the Office of the respondent on 11.06.2004, because, there is no records produced by the respondent before this Court to prove that the person, who signed in the Letter Delivery Book was not employee in the Office of the respondent, or not a person authorized to receive the documents. The practice of giving acknowledgment in the Letter Delivery Book has been consistently followed by the Commercial Tax Department, in spite of this Court repeatedly deprecating such practice and in spite of several earlier orders, the Commercial Tax Department continues to follow the archaic, old principles, though they had switched over to the pattern of filing e-returns.

8. Hence, for the above said reasons, the Writ Petition is allowed, the impugned order is set aside and the matter is remanded to the respondent for fresh consideration. The petitioner is granted eight weeks' time from the date of receipt of a copy of this order to file their objections and produce necessary documents, and, on receipt of the same, the respondent shall afford an opportunity of personal hearing to the petitioner, and redo the assessment, in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

sd

To

The Assistant Commissioner, (CT) Zone IX,
Greams Road, Chennai - 6.

+1cc to the Special Government Pleader Sr. 47108
+1cc to M/S.Lakshmi Sriram, Advocate Sr. 47378

Writ Petition No.21030 of 2004

VR(23/8/2017)