

(2010) 01 MAD CK 0150

Madras High Court

Case No: Writ Petition No. 880 of 2010 and M.P. No. 1 of 2010

Manali Petrochemicals Ltd.

APPELLANT

Vs

Assistant Commissioner (Ct),
Saidapet Assessment Circle,
Chennai

RESPONDENT

Date of Decision: Jan. 28, 2010

Citation: (2011) 42 VST 566 : (2011) 42 VST 556

Hon'ble Judges: P. Jyothimani, J

Bench: Single Bench

Advocate: B. Raveendran, for the Appellant; R. Mahadevan, Additional Government
Pleader, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P. Jyothimani, J.

The impugned order of assessment dated December 24, 2009 passed by the respondent/assessment officer is assailed on the ground that the same is against the circular issued by the Commissioner of Commercial Taxes dated July 23, 2007. In the said circular issued by the Commissioner of Commercial Taxes in circular No. 23/2006 dated December 27, 2006, the following instructions have been issued :

(1) The assessing authorities should pass deemed assessment orders in all the cases where the prescribed returns have been filed and declaration forms and certificates submitted in support of their claim of exemption or concessional rate of tax.

(ii) The assessing authorities should sort out the assessment files where there is no need to file saleable forms differentiated from the files involving saleable forms.

(iii) Wherever no saleable forms are involved, they have to pass orders accepting the turnovers reported by the dealers. Even if there is mistake/error in a return, they

should pass orders without calling for accounts. Thereafter, they can revise the order, wherever necessary, (iv) Wherever the declaration forms or certificates prescribed have not been submitted, notices must be issued immediately by disallowing the concessional rate of tax/exemption specifying the date (within 90 days) before which the records should be filed.

(v) In case the forms and declarations were not filed within the stipulated time, orders should be passed disallowing the claim of concessional rate of tax/exemption.

(vi) If the declaration forms or certificates are produced subsequently after passing of the order, revision of assessment may be considered.

2. In the said circular it is made very clear that 90 days notice to be given to the assessee for the purpose of raising the objections before passing the order of assessment. However, in the notice issued by the respondent dated December 21, 2009, the respondent has given only three days time by way of final opportunity to file C form and immediately thereafter on April 22, 2009, the impugned order of assessment came to be passed with the following main portions :

Claims of exemption is discussed as under :

(1) Direct export and deemed export sales - Rs. 1,91,21,167.

No documents produced. Hence this turnover is taxable at 23.5%

(2) High sea sales - Rs. 3,19,87,962.

Documents like, high sea sale agreement. Bill of lading, bill of entry, high-sea sale invoice, etc., were not filed. Hence this turnover is taxable at 23.5%.

(3) Discounts and sales return - Rs. 5,09,39,685

(Rs. 4,11,59,326 + Rs. 97,80,359)

3. On the face of it, it is very clear that the order of assessment dated December 24, 2009 is based on the notice issued by the respondent dated December 21, 2009 and in that view of the matter, the impugned order is liable to be set aside and accordingly, the impugned order of assessment dated December 24, 2009 is set aside, however, with liberty to the respondent to follow the circular issued by the Commissioner dated December 27, 2006, by giving opportunity to the petitioner and pass appropriate orders. It is made clear that while such opportunity is given, the petitioner shall utilise the same for the purpose of producing the entire records in respect of exemption claims and after filing such documents and objections as per circular dated December 27, 2006, the respondent shall pass appropriate orders on merits and in accordance with law.

4. The writ petition stands allowed with the above directions. Consequently, connected miscellaneous petition is closed. No costs.