IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.13573 of 2015
And
M.P.Nos.1 and 2 of 2015

M/s.Ganesan Builders Ltd,
Rep. by its Director Mr.V.Ganesan ...Petitioner

Vs.

The Assistant Commissioner (CT),
Alwarpet Assessment Circle,
No.46, Greenways Road,
Chennai – 600 028. ...Respondent

Prayer:

Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records of the respondent in CST/ 580520 / 2011-12 dated 10.03.2015 and quash the same as ultra virus and contrary to law and opposed to the facts and circumstances of the case.

For Petitioner : Ms.C.Rekha Kumari
For Respondent : Mr.V.Haribabu
Additional Government Pleader (T)

ORDER

By consent of both the parties, the writ petition is disposed of, at the stage of admission itself.

2.This writ petition has been directed against the impugned order on the ground that the issue raised in the writ petition is covered by the judgment of the Hon'ble Full Bench of this Court reported in [2006] 148 STC 256 (Mad) (State of Tamil Nadu Vs. Nu-Tread Tyres) wherein is has been held as follows:

Held, that section 10(b) of the Act provides for an offence if any person being a registered dealer falsely represents when purchasing any class of goods that goods of such class are covered by his certificate of registration. The expression "falsely represents", clearly shows that the element of mens rea is the necessary component of the offence. In the absence of mens rea, resort to penal provision would not be proper unless it is established that the conduct of the dealer was contumacious or that there was deliberate violation of the statutory provision or wilful disregard thereof. If the registered dealer honestly believes that any particular goods are embraced by the certificate of registration and on that belief makes a representation, he cannot be held guilty of the offence under section 10(b) of the Act and no penalty can be imposed under section 10-A of the Act. Therefore, mens rea is an essential ingredient for the levy of penalty under section 10(b) of the Central Sales Tax Act, 1956."

3.Mr.V.Haribabu, learned Additional Government Pleader (T) appearing for the respondent also fairly submitted that the issue raised in the writ petition is covered by the judgment cited above.

4.A mere reading of the above said judgment shows that if the registered dealer honestly believes that any particular goods are embraced by the certificate of registration and on that belief makes a representation he cannot be held guilty of the offence under Section 10(b) of the Act and no penalty can be imposed under Section 10-A of the Act. That apart, impugned proceeding does not whisper about providing reasonable opportunity of hearing to the petitioner while levying penalty under Section 10A of the CST Act. Therefore, this Court finding that providing a reasonable opportunity of being heard is a mandatory one, is inclined to set aside the impugned order.

5.In fine, by following the above said judgment, the writ petition is disposed of by setting aside the impugned order. No costs. Consequently, the connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar

/true copy/

` Sub-Assistant Registrar

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To

1.The Assistant Commissioner (CT),
Alwarpet Assessment Circle,
No.46, Greenways Road,
Chennai - 600 028

+1 CC to Ms.C.Rekha Kumari, Advocate. SR.NO.24644

CO-AK
JD 19/05/2015

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