IN THE HIGH COURT OF JUDICATURDE AT MADRAS

Dated: 12.06.2015

Coram

The Honourable Mr.JUSTICE T.RAJA

W.P.No.16666 of 2015
and
M.P.No.1 of 2015

Tvl.Hitech Industrial Linings Pvt.
Ltd., rep. By its
Managing Director S.Baskar .. Petitioner

vs.

The Assistant Commissioner (CT) (FAC),
Dharmapuri Assessment Circle,
Dharmapuri. .. Respondent

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records on the file of the respondent in CST No.442832/2013-14 dated 06.03.2015 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan

For Respondent : Mr.Manoharan Sundaram,
Addl. Govt. Pleader (T)

ORDER

This writ petition is filed by Tvl.Hitech Industrial Linings Pvt. Ltd., challenging the impugned proceedings of the respondent - the Assistant Commissioner (CT), Dharmapuri Assessment Circle, dated, 6.3.2015, passed under Section 9(2) of the Central Sales Tax Act, 1956,(hereinafter referred to as the CST Act), read with Section 84 of the Tamil Nadu Value Added Tax Act, 2006, (hereinafter referred to as 'the Act' in short), on the ground that it has been passed without giving an opportunity of being heard to the petitioner, as required under Section 84 of the Act and as such, the same his liable to be set aside.

2. The learned counsel for the petitioner would submit that the petitioner is carrying on the business of 'Linning' and the respondent, by the impugned order, dated 6.3.2015, all of a sudden,

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imposed the levy at the rate of 14.5% on the entire turnover, for the assessment year 2013-14, under Section 9(2) of the CST Act read with Section 84 of the Act, as the law requires that an opportunity of being heard should be given before enhancing the rate of tax and it has been reiterated by this Court in its order, dated 29.04.2015, passed in W.P.No.13239 of 2015, holding that without grant of notice and giving an opportunity of being heard, as required under Section 84 of the Act, the levy of tax is not permissible and accordingly, the Division Bench set aside the impugned order.

3. The learned counsel would further submit that no doubt the petitioner has got the right of appeal under Section 51 of the Act, but, since nowhere in the impugned order, passed under Section 9 (2) of the CST Act read with Section 84 of the Act, it is stated that the petitioner has been issued with any prior notice before passing the final order, the impugned order is liable to be set aside.

4. Mr.Manoharan Sundaram, the learned counsel appearing for the respondent, supporting the impugned order, has submitted that it is not an order passed under Section 84 of the Act, as the respondent has wrongly cited Section 84 and actually this is an order passed under Section 27(1)(b) of the Act.

5. Section 27(1)(b) of the Act is usefully extracted hereunder:

> "Sec.27. Assessment of escaped turnover and wrong availment of input tax credit-(1)
>
> (a) . . . .
>
> (b) Where, for any reason, th whole or any part of the turnover of business of a dealer has been assessed at a rate lower than the rate at which it is assessable, the assessing authority may, at any time within a period of five years from the date of order of assessment by the assessing authority, re-assess the tax due after making such enquiry as it may consider necessary.

6. Even a mere reading of Section 27(1)(b) of the Act shows that any final order can be passed only after holding a proper enquiry. But, in the present case, the respondent is not in a position to support the impugned order stating that there was an enquiry held, after issuing notice calling upon the petitioner to submit his explanation or to appear for an enquiry. Therefore, on the limited ground that no notice was issued before passing the impugned order, I am of the view that the impugned order is liable to be set aside. Accordingly, the impugned is set aside and the matter is remitted to the respondent for passing appropriate order, after

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giving a reasonable opportunity to the petitioner. The petitioner is directed to produce a copy of this order before the respondent and on such production, the respondent shall fix the date of personal hearing and thereafter pass an appropriate order.

7. In the result, the writ petition is allowed. No costs. Connected miscellaneous petition is closed.

Msk

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT) (FAC),
Dharmapuri Assessment Circle,
Dharmapuri.

+1cc to Mr.R. Senniappan, Advocate, S.R.No.28893
+1cc to the Government Pleader, S.R.No.28768

KGK(CO)
EU(24/08/2015)

W.P.No.16666 of 2015

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