THE HON'BLE SRI JUSTICE G.CHANDRAIAH
AND
THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

W.P.NO.14293 OF 2015

O R D E R (Per the Hon'ble Sri Justice G.Chandraiah)

Heard the counsel for the petitioner – assessee and the Government Pleader for Commercial Taxes (Telangana).

2. The petitioner firm, which is being represented by its proprietor, is dealing in the business of sales/supplies of electrical machinery parts to various companies. The case of the petitioner is that the 3rd respondent – the Deputy Commercial Tax Officer, intimated the petitioner through email on 05-10-2013 about the Form VAT 304 audit intimation notice dated 27.09.2013 and immediately the petitioner approached the 3rd respondent on 22.10.2013 and after receiving the audit intimation notice in person, sought time of fifteen days to produce the books of accounts. The further case of the petitioner is that it had informed to the said authority that it had changed the business from the present address at Narayanaguda to the new address at Jeedimetla, Secunderabad and accordingly the new address was mentioned in Form VAT 304. Now the grievance of the petitioner is without serving show cause notice in form VAT 305A to the new address mentioned by it in Form VAT 304 at Jeedimetla, the 3rd respondent passed the impugned assessment order in form VAT 305 vide AAO No.3998 in Ref.NMP/DCTO/VAT/2013-14 dated 31.07.2014 determining the tax payable by the petitioner at Rs.38,12,013/- for the tax period from April 2009 to January, 2014. In pursuance of the assessment order dated 31.7.2014, the petitioner was issued with tax payment notice dated 16.12.2014. Challenging the said tax payment notice dated 16.12.2014, the petitioner had earlier filed a writ petition before this court in W.P.No.235/2015 on the ground that the tax payment notice dated 16.12.2014 was issued without serving the copy of the assessment order dated 31.7.2014. This court taking notice of the fact that the assessment order was served in the court on 27.4.2015, disposed of the writ petition on the said date, giving liberty to the petitioner to avail remedies available under law against the assessment order.
Now the petitioner filed the present writ petition challenging the assessment order dated 31.7.2014 on the ground that without serving show cause notice, the impugned assessment order was passed.

3. The principle contention of the petitioner being non-service of notice, this court on 22.6.2015 specifically directed the respondent – authority to file an affidavit specifically dealing with that aspect, apart from producing the record. No such affidavit denying the specific averment of the petitioner, has been filed by the respondents and hence the principle contention of the petitioner remained uncontroverted. Therefore, without going into other merits of the case, on the ground of violation of principles of natural justice, the impugned assessment order dated 31.7.2014 is liable to be set aside and accordingly set aside. However, this order shall not preclude the 3rd respondent to serve show cause notice afresh in Form VAT 305 A and pass orders in accordance with law.

4. The writ petition is accordingly allowed. No costs.

5. Miscellaneous petitions pending if any, shall stand closed.

G.CHANDRAIAH,J

CHALLA KODANDA RAM,J

DATE:20—07—2015

AVS