THE HON'BLE SRI JUSTICE K.C. BHANU
AND
THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

SPECIAL APPEAL No.33 OF 2003

JUDGMENT: (per Hon'ble Sri Justice K.C.Bhanu)

This Special Appeal is directed against the order vide proceedings No.CCT's Ref.L.III(1)1677/2001-2, dated 29.10.2002, passed by the Commissioner of Commercial Taxes, Andhra Pradesh, Hyderabad, whereunder and whereby, the Commissioner has taken up a *suo motu* revision against the order of the Appellate Deputy Commissioner (CT), Secunderabad Division, Hyderabad, and a show cause notice was issued in the assessment year 1995-96.

2. Initially, the Commercial Tax Officer, Sangareddy Circle, assessed the turnover including first sales of wind mill spare parts for Rs.1,08,88,500/- for the assessment year 1995-96. Aggrieved by the same, the dealer filed an appeal before the Appellate Deputy Commissioner (CT), Secunderabad Division, Hyderabad. The Appellate Deputy Commissioner through his Appeal Order No.N/111/98-99, dated 06.11.1998, applying the G.O.Ms.No.2048, Revenue, dated 14.12.1982 as amended by G.O.Ms.No.422, Revenue (S) Department, 27.04.1985, held that spare parts of wind mills are also useful in the production of renewable energy.

3. The only contention raised by the learned counsel for the appellant is that after receiving show cause notice, dated 13.09.2001, from the Commissioner of Commercial Taxes, Andhra Pradesh, Hyderabad, the assessee filed objections on

27.09.2001. Thereafter, on 27.10.2001 advocate appearing for the appellant before the Commissioner of Commercial Taxes filed Vakalat and also a Memo seeking four (04) weeks time for personal hearing and also for submitting written submissions. But, no opportunity for personal hearing was given and the order impugned in this Special Appeal was passed on 29.10.2002 i.e., nearly after one year from the date of filing objections. He also placed reliance on a decision of this Court in ***Marz Furnitures & Decors (P) Limited, Hyderabad Vs. Commercial Tax Officer (Audit), Abids Division, Hyderabad & Another***[1], wherein it is held thus:-

> "Since we have already held that the impugned order cannot be sustained on the ground of the failure of the 2nd respondent to give an opportunity of personal hearing to the petitioner, we are not inclined to express any opinion with regard to the controversy that certain determinations which were not proposed in the show-cause notice were included in the final order. Instead, we deem it appropriate to grant liberty to the petitioner to submit an additional reply, if any, with regard to the tax sought to be so levied within two weeks from today. Thereafter, the 2nd respondent shall fix a date for personal hearing and pass appropriate orders in accordance with law after hearing the petitioner."

4. As seen from the record, in the present case also, no opportunity of personal hearing was given to the appellant. The facts in the present case are also similar to the facts in the decision referred supra. Therefore, the impugned order is liable to be set aside.

5. Accordingly, the Special Appeal is allowed setting aside the impugned order, dated 29.10.2002, and the matter is remanded to the Commissioner of Commercial Taxes, Andhra Pradesh,

Hyderabad, directing him to dispose of the matter, after giving a reasonable opportunity to the appellant or his counsel, in accordance with law. There shall be no order as to costs. Miscellaneous Petitions, if any, in this appeal shall stand closed.

JUSTICE K.C. BHANU

JUSTICE A.SHANKAR NARAYANA

Date:04.03.2015
INL

[1] 2012 (56) APSTJ 133