HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.21356 OF 2015

ORDER:- (per GC,J)

The writ petition is filed challenging the assessment order dated 20.01.2015, passed by the 1st respondent-Commercial Tax Officer, for the tax period 01.04.2013 to 31.10.2014, on the ground that no show-cause notice was issued to the petitioner after the Assessing Officer having been granted authorization to assess the firm of the petitioner.

The facts on record are not in dispute. Initially, the Deputy Commissioner (CT)-3rd respondent vide his order dated 17.11.2014 in ADMIB No.36141117396284035 authorized the Commercial Tax Officer-1st respondent to conduct an audit of the petitioner's firm. The said authorization was for the period from 1.4.2013 to October, 2014. Pursuant to the authorization, a show cause notice dated 29.12.2014 was issued to the petitioner and after taking the objections of the petitioner into consideration, an assessment order dated 31.01.2014 came to be passed. Thereafter, Form ADM1C was issued on 06.01.2015 in ADM 1C No.20150106076254 authorizing the Audit Officer, C.T.O, Lord Bazaar to conduct the assessment of the petitioner's firm. The authorization came to be issued on 06.01.2015 and assessment order was passed on 20.01.2015.

The principal contention of the learned counsel for the petitioner is that the authorization to the 1st respondent was given on 06.1.2015 to make assessment of the petitioner's firm and after granting of the authorization for carrying out the assessment, there was no show-cause notice issued to the petitioner, though earlier show-cause notice was issued for conducting the audit in terms of the authorization issued on 17.11.2014. In that view of the matter, learned counsel for the petitioner submits that without there being any fresh authorization to the Commercial Tax Officer-1st respondent to make the assessment of the petitioner's firm, the impugned assessment order is bad in law. The learned counsel for the petitioner placed reliance on the orders dated 22.08.2014 and 19.01.2015, passed by this Court in W.P.No.11819 of 2014 and W.P.No.34969 of 2014 respectively.

This legal position is not being disputed by the learned counsel appearing for the Commercial Tax Department. Further, we find that the regular Assessing Officer of the petitioner is the 2nd respondent i.e., the Commercial Tax Officer, Malakpet, Hyderabad. Now in terms of Rule 59 (1) (4) of the A.P. Value Added Tax Rules, 2005, if the assessment is to be conducted by any officer other than the regular Assessing Officer, a specific authorization is required to be given and pursuant to such authorization, the other proceedings can be carried out after issuance of show cause notice. Undisputedly in the present case after having been authorized to make assessment, the Commercial Tax Officer-1st respondent did not issue any show cause notice to the petitioner. In that view of the matter, the order impugned suffers from infirmity of violation of the provisions of the A.P. Value Added Tax Act, 2005 and the Rules made thereunder for issuance of show cause notice and calling for objections and thereby the assessment becomes void.

Accordingly, the writ petition is allowed setting aside the assessment order dated 20.01.2015, passed by the 1st respondent for the tax period 01.04.2013 to 31.10.2014. However, a liberty is given to the Assessing Authority to make a fresh assessment of the petitioner's firm by following the prescribed procedure as contemplated under the statute. No order as to costs. Miscellaneous petitions, if any pending in this petition, shall stand closed.

G. CHANDRAIAH,J

CHALLA KODANDA RAM,J

Date:14.07.2015.
Gk

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

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