HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.28783 OF 2015

ORDER:- (per GC,J)

The writ petition is filed challenging the assessment order dated 30.07.2015, passed by the 2nd respondent-Commercial Tax Officer (Intelligence), in Form VAT 305, for the tax period from 01.04.2013 to 31.03.2014, assessing the balance tax payable at Rs.4,77,32,646/-.

The brief facts of the case are that the petitioner is a limited company incorporated under the Companies Act and engaged in the business of manufacture of sugar, distillery, carbon dioxide, power generation etc. The Registered Office of the petitioner is situated at Hyderabad and its factories are situated at Adloor Yellareddy Village, Sadasiva Nagar Mandal, Nizamabad District and at Maagi Village, Nizam Sagar Mandal, Nizamabad District. It is stated that as authorized by the Deputy Commissioner (CT), Secunderabad Division, Hyderabad, the 2nd respondent after auditing the books of accounts for the period 2013-14, issued notice of assessment of VAT in Form VAT 305A, dated 24.02.2015 proposing to disallow the claim of input tax credit made by the petitioner and also restricted the input tax credit claimed by the petitioner under Section 13 of the A.P. VAT Act, 2005 (for short "the Act") read with Rule 20 of the A.P. VAT Rules (for short "the Rules) and brought to an artificial demand payable by the petitioner to a tune of Rs.4,77,32,646/-. Pursuant to the assessment notice, the petitioner addressed a letter dated 10.03.2015 to the 2nd respondent requesting to provide a copy of the statement obtained from the landlord of the business premises of the buyer to enable him to submit a suitable reply to the assessment notice, but the 2nd respondent did not supply the copy of the statement to the petitioner. It is further stated that the 2nd respondent issued revised notice of assessment of VAT in Form VAT 305A dated 25.03.2015, proposing to arrive balance tax payable by the petitioner at Rs.5,03,25,140/- by disallowing claim of input tax credit made by the petitioner and also CST sales on cross verification treating it as VAT sales on a turnover of Rs.77,73,02,013/-. However, the petitioner filed his objections on 15.05.2015, against the revised show cause notice dated 25.03.2015, contending that the disallowance of ITC is not justified and further the levy of tax on goodwill in the original show cause notice is not correct. It is stated that the 2nd respondent, without considering any of the contentions raised in the objections filed by the petitioner and not even serving the copies of the material sought for by the petitioner, passed the impugned order. Being aggrieved by the impugned order, the petitioner filed the present writ petition.

Learned counsel for the petitioner vehemently contended that even though the petitioner has raised several objections on various aspects including claiming of certain exemptions, the 2nd respondent has not considered them while passing the impugned order. Though the petitioner in his objections categorically requested for giving him an opportunity of hearing, the 2nd respondent, without affording such opportunity, passed the impugned order. Learned counsel for the petitioner has relied upon the judgments of the Hon'ble Supreme Court and this Court reported in **Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota v. Shukla and brothers**[1]**, M/s. S. Lalaiah & Co. v. the Deputy Commissioner (CT), Saroornagar Division, Nampally, Hyderabad and another**[2] **and Kirby Building Systems India Limited, Pashamyalaram, Medak District vs. Deputy Commissioner (CT), Charminar Division, Hyderabad and others**[3], to support his contentions. He has further contended that even if the statute does not prescribe to grant personal hearing to the dealer when a dealer is sought for personal hearing, the authority concerned is duty bound to provide, otherwise it would amount to violation of principles of natural justice. Further, when the order passed by the 2nd respondent is not a speaking order, it is liable to be set aside without imposing any conditions and the matter requires to be remitted back to the authorities concerned to consider afresh by issuing proper notice and also giving the opportunity of hearing to the petitioner.

On the other hand, learned Government Pleader for the Department submits that the contentions of the petitioner that the impugned order is not a speaking order and the petitioner was not given the opportunity of hearing before passing the impugned order, cannot be accepted as the impugned order itself consists of 14 pages, and the authority, while passing the impugned order, had considered the objections filed by the petitioner and the petitioner was given the opportunity of hearing before the impugned order was passed

Learned counsel further submits that even a reading of the impugned order reveals that none of the objections raised by the petitioner were mentioned in the impugned order. The assessing authority, in its order, observed that the contention of the dealer is verified with reference to the reply filed on 15.5.2015 and the request of the dealer is not considered and it stands good as proposed in the revised show cause notice and thereby the assessing authority had violated the principles of natural justice. The authority who has power to deal with the matter shall have to deal with the subject in accordance with the law and issue proper notice. He further submits that when the notice has been given by the authorities seeking imposition of certain taxes, the assesses are entitled to make certain objections to seek certain exemptions or otherwise in accordance with law in support of their claim.

Heard Sri P. Vasudeva Reddy, learned counsel for the petitioner and the learned Government Pleader for Commercial Tax (T.G).

We have carefully considered the submissions of the learned counsel for both the parties with reference to the material available on record.

It is for the assessing authority to consider in detail and give reasons either to accept the plea of the petitioner or rejecting the plea and come to the conclusion by way of a reasoned order. The impugned order reveals that though the objections have been raised by the petitioner in various aspects, the assessing authority did not take into consideration of those objections and just recoded one sentence that "they verified with reference to the reply filed on 15.5.2015 and stated that the request of the dealer is not considered," and therefore, the assessing authority has violated the principles of natural justice. As far as provision of opportunity of hearing to the petitioner is concerned, learned counsel for the petitioner has contended that no opportunity was given to the petitioner before impugned order was passed and admittedly, no such opportunity was given to the petitioner. In that view of the matter, we agree with the arguments of the learned counsel for the petitioner that the petitioner was not given any opportunity of hearing before the impugned order was passed and we have no hesitation to say that the impugned order is one which is in violation of principles of natural justice. Once the impugned order is found to have been passed in violation of the principles of natural justice, automatically, the impugned order is liable to be set aside and the matter be remitted back to the authority concerned to consider afresh by giving notice and an opportunity of hearing to the petitioner and pass appropriate orders in accordance with law without imposing any conditions.

On the above analysis, the writ petition is allowed setting aside the impugned order and the matter is remitted back to the authorities concerned to consider the matter afresh. However, the 2nd respondent is directed to issue a fresh notice to the petitioner, consider the objections if any may be filed by the petitioner, give the petitioner an opportunity of hearing and pass appropriate orders in accordance with law, within a period of four weeks from the date of receipt of copy of this order. It is needless to mention that the material placed before the assessing authority shall have to be made available to the petitioner to enable him to respond to the same. No order as to costs.

Miscellaneous Petitions, if any pending in this writ petition shall also stand closed.

G. CHANDRAIAH,J

CHALLA KODANDA RAM,J

Date:10.09.2015.
Gk

HON'BLE SRI JUSTICE G. CHANDRAIAH
AND
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<u>WRIT PETITION No.28783 OF 2015</u>

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[1] (2010) 30 VST 114 (SC)

[2] (2007) 45 APSTJ 116

[3] (2012) 54 SPSTJ 44