THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE T.RAJANI

WRIT PETITION NO.14404 OF 2017

ORDER: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

The order impugned in this Writ Petition is the assessment order passed by the first respondent in Form VAT - 305 dated 27.02.2017.

The petitioner, a registered dealer on the rolls of the second respondent, was assessed to tax on a turnover of Rs.158,71,55,306/-; and Rs.1,56,83,268/-, which the petitioner had claimed as input tax credit, was disallowed.

Dr. S.R.R.Viswanath, learned counsel for the petitioner, would submit that irrelevant considerations weighed with the first respondent in passing the impugned assessment order; the assessment order records that the petitioner was established with a view to claim ITC on purchases made by them without any transfer of material or sale in the real sense of the term; and reliance is placed by the 1st respondent on the statement furnished by the bank, in response to a letter addressed to them by the second respondent, without the petitioner being put on notice in this regard before the assessment order was passed.

Sri T.Vinod Kumar, learned Special Standing Counsel for Commercial Taxes, would contend that despite being specifically informed, in the notice in Form VAT 305-A dated 23.12.2016, that the petitioner was established with a view to claim ITC in all purchases made by them without any transfer of material, the petitioner had failed to produce proof to show that the goods physically moved from M/s. Sri Exports to them.

While it is no doubt true that the reply to the show cause notice is silent regarding the waybills, if any, issued by M/s. Sri Exports, Dr. S.R.R.Viswanath, learned counsel for the petitioner, would draw our attention to certain waybills, filed along with the Writ Petition, which appear to have been generated by M/s. Sri Exports evidencing transportation of goods to the petitioner herein. While the petitioner did not produce these way bills before the assessing authority to claim input tax credit, the fact also remains that the show cause notice does not specifically require them to produce way bills, nor has the petitioner been specifically informed that their claim for input tax credit would be disallowed as they failed to produce the way bills before the 1st respondent.

It is evident, therefore, that the assessment order was passed based on facts, of which the petitioner was not informed in the show cause notice issued to them earlier. We consider it appropriate, therefore, to set aside the impugned assessment order. The first respondent shall issue a notice afresh in Form VAT 305-A; give the petitioner an opportunity of being heard, and an opportunity of oral hearing; and, thereafter, pass a fresh assessment order in accordance with law at the earliest, and in any event not later than two months from the date of receipt of a copy of this order. Needless to state that, in case the petitioner does not avail the opportunity of filing their reply to the show cause notice within time or fails to appear before the assessing authority on the date of oral hearing, it is open to the first respondent to proceed and pass an assessment order without giving the petitioner any further opportunity.

The Writ Petition stands disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, ACJ)

(T.RAJANI, J)

11th July 2017
RRB