**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

**<u>WRIT PETITION No. 42238 OF 2017</u>**

Between:
M/s. J.R. Exports, # 18/508, B.K.M. Kadapa,
Dr. Y.S.R. Kadapa District, A.P.,
Rep. by its Proprietrix Mrs. Leela Devi Chopra … Petitioner
AND
The Deputy Commissioner (CT),
Door No. 1/499, Smith Road,
Near Zilla Parishad, Kadapa – 516001,
Y.S.R. Kadapa District, A.P., and others … Respondents

Date of order pronounced : 15-12-2017

**<u>SUBMITTED FOR APPROVAL</u>:**

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**
**AND**
**THE HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI**

1. Whether Reporters of Local newspapers may be allowed to see the order? Yes/No

2. Whether the copy of order may be marked to Law Reporters/Journals? Yes/No

3. Whether Their Lordships wish to see the Fair copy of the order? Yes/No

***C.V.NAGARJUNA REDDY, J.***

***KONGARA VIJAYA LAKSHMI, J.***

***THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

**AND**

**THE HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI**

**+WRIT PETITION No. 42238 OF 2017**

**%Dated: 15-12-2017**

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VERSUS

$The Deputy Commissioner (CT),
Door No. 1/499, Smith Road,
Near Zilla Parishad, Kadapa – 516001,
Y.S.R. Kadapa District, A.P., and others … Respondents

**!Counsel for the petitioner : Sri G.Narendra Chetty**

**^Counsel for the respondents : Sri S.Suri Babu**

**<GIST :**

**>HEAD NOTE :**

**?Cases referred :**

1. 44 APSTJ 479
2. (2011) 46 VST 179 (AP)

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

**AND**

**THE HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI**

**WRIT PETITION No. 42238 OF 2017**

**DATED 15TH DECEMBER, 2017**

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AND

The Deputy Commissioner (CT),
Door No. 1/499, Smith Road,
Near Zilla Parishad, Kadapa – 516001,
Y.S.R. Kadapa District, A.P., and others … Respondents

Counsel for the petitioner : Sri G.Narendra Chetty

Counsel for the respondents : Sri S.Suri Babu

THE COURT MADE THE FOLLOWING

**ORDER:** (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

Revision order *vide* D.C.A.O.No. 75708 in Rc.No. A1/28576938553/2017 (2009-10 CST) dated 03-08-2017 of respondent No. 1, whereby while rejecting certain H-Forms, he levied CST at Rs.42,46,783/-, is assailed in this Writ Petition.

2. The prime ground on which the petitioner filed this Writ Petition, bypassing the alternative remedies of appeal, is that though, in his objections filed to the revision show-cause notice dated 07-03-2017 issued by respondent No. 1, the petitioner requested for return of the defective H-Forms while citing the judgment of Madhya Pradesh High Court in ***Commissioner of Sales Tax Vs. MPV Badrilal Hanuman Prasad of Indore***[1], respondent No. 1 has not returned the H-Forms to enable the petitioner to cure the defects and proceeded with the passing of the revision assessment order.

3. At the hearing, Sri G.Narendra Chetty, learned counsel for the petitioner, has drawn our attention to the objections dated 20-03-2017 filed by the petitioner, wherein she has *inter alia* stated as under:

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[1] 44 APSTJ 479

*"1) As per our knowledge, we have filed H-forms issued by the exporters in all the cases, duly filling all the columns in the forms-H issued by the Exporters.*

*2) All the invoices are covered by H-forms and Bills of ladings issued by Exporters.*

*Further, all the transactions, are covered by –forms and Bills of ladings, issued by the Exporters, as required under Section 5 (4) of the CST Act, read with Rule 12 (10) of CST (R&T) Rules.*

*The Deputy Commissioner (CT), is not pleaded to point out specific defect in each form, but pointed out generally. Under such circumstances, it is not possible for us to file objections, or to rectify the defective forms.*

*In this connection, we invite kind attention to Commissioner of Sales Tax Vs. MPV Badrilal Hanuman Prasad of Indore (44 APSTJ P.479), wherein it was held that, Any declaration of certificate required to be filed under the Act or the rules or any notification issued there under, shall not be rejected as invalid on the ground that it lacks in certain material particulars or is defective until the dealer is given reasonable opportunity to supply the omissions or to remove the defects occurring in such declaration or certificate or to furnish declaration or certificate."*

He has also invited our attention to the order of respondent No. 1, which referred to the petitioner's objections, and submitted that though respondent No. 1 has religiously reproduced the contents of the petitioner's objections, he failed to deal with the same. Learned counsel also placed reliance on the judgment of a Division Bench of this Court in ***Bharat Electronics Limited Vs. Deputy Commissioner (CT), No. II Division, Vijayawada and another***[2] in support of his submission that non-returning of the defective forms to enable the assessee to cure the defects and resubmit the same constitutes violation of principles of natural justice.

4. Sri S.Suri Babu, learned special standing counsel for Commercial Taxes (A.P.), has referred to certain copies of H-Forms filed by the petitioner and submitted that the said forms would show that the petitioner has not filled up the gaps pertaining to relevant information and that therefore respondent No. 1 is justified in rejecting the H-Forms.

5. The short question that needs to be decided in this Writ Petition is whether or not respondent No. 1 has observed the principles of natural justice in passing the impugned revision order.

[2] (2011) 46 VST 179 (AP)

In the impugned order, respondent No. 1 himself extracted part of the objections raised by the petitioner which referred to the judgment of Madhya Pradesh High Court with a request to return the defective forms to enable it to rectify the mistakes and to resubmit the same by submitting detailed objections. However, while not dealing with the said request and rendering a finding thereon either accepting or rejecting the same, respondent No. 1 went on to discuss the 30 H-Forms filed by the petitioner in respect of 127 transactions and concluded that as the forms are not duly filled in as required under Rule 12 (10) of the Central Sales Tax (Registration and Turnover) Rules, 1957, the petitioner's contention is rejected. Learned Special Standing Counsel has not disputed that in ***MPV Badrilal Hanuman Prasad of Indore*** (1st *supra*), the High Court of Madhya Pradesh held that wherever the prescribed forms are found defective, the assessee is entitled to an opportunity of removing the defects. In ***Bharat Electronics Limited*** (2nd *supra*), this Court has set aside a similar order on multiple grounds, one of which is that not giving an opportunity to the assessee to rectify the defects in F-Forms falls foul of the *audi alteram partem* rule.

6. In the above analysis, we are of the opinion that the impugned revision order passed by respondent No. 1 is in the teeth of the law declared by this Court as well as the High Court of Madhya Pradesh as discussed above. On this short ground, the impugned revision order is set aside. Respondent No. 1 is directed to return the defective H-Forms to the petitioner within three weeks from the date of receipt of a copy of this order. Within three weeks of taking return of the H-Forms, the petitioner is permitted to resubmit the same by removing the defects. Thereafter, respondent No. 1 shall pass a fresh revision order.

7. The Writ Petition is accordingly allowed.

8. As a sequel to disposal of the Writ Petition, W.P.M.P.No. 52374 of 2017 shall stand closed as infructuous.

***C.V.NAGARJUNA REDDY, J.***

***KONGARA VIJAYA LAKSHMI, J.***

Date: 15-12-2017.
L.R. Copies to be marked.
B/O
JSK