THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

and

THE HONOURABLE SRI JUSTICE T. AMARNATH GOUD

Writ Petition No.25706 of 2019

ORDER : (per Hon'ble M.S. Ramachandra Rao)

Heard the counsel for petitioner, and Sri M. Govind Reddy, counsel for respondents.

2. The short question which arises for consideration in this Writ Petition is whether the Assessing Authority (4th respondent) who passed the Assessment Order dt.11.05.2017 against petitioner could rely upon the material procured by him from the Road Transport Authority (R.T.A.) which he did not furnish it to the petitioner while making assessment of the VAT Returns of the petitioner for the tax period 01.04.2014 to 31.03.2016.

3. It is not in dispute that in the show-cause notice issued to petitioner on 11.01.2017, the 4th respondent proposed to take into account certain information which he had obtained from the Road Transport Authority and asked the petitioner to submit his objections thereto.

4. Along with the said show-cause notice, the material obtained by the 4th respondent from the R.T.A. was not enclosed.

5. The petitioner claims to have approached the 4th respondent on 15.02.2017 and requested for the said material by a letter dt.15.02.2017.

6. The counsel for petitioner contended that the receipt of the letter was not acknowledged by the Office of 4th respondent and since the petitioner had no choice, the petitioner gave an explanation on 17.02.2017 on the basis of the material which he had.

7. The 4th respondent then passed the Assessment Order dt.11.05.2017 taking into account the data obtained by him from the R.T.A., and considering the contentions raised by the petitioner.

8. The petitioner challenged the said order before the 3rd respondent and specifically raised the following ground in the Grounds of Appeal, viz.,

> *"2. LD AC(CT) Audit having obtained the report or statements of vehicles registered during the impugned tax periods 2014-15 to 2015-16 from the local RTA office suo moto, at the back of the appellant dealer could not provide such report or details to the dealer except including suo moto worked out illegal differential T.O. and Tax thereon in the show-cause notice VAT 305A dated 11.01.2017 is utter violation of principles of natural justice and fair play. As such, the impugned of proceedings VAT 305 dated 11.05.2017 deserves to be set aside and prayed for DENOVO verification of records with such report or details got from RTA office in presence of the dealer to allege and attribute so much of differential turnovers suo moto clearly tantamount to violation of principles of natural justice and fair play to be set aside in TOTO."*

9. The Appellate Authority, while acknowledging that it is the duty of Assessing Authority to furnish full data collected by him from the R.T.A. authorities to petitioner while issuing of show-cause notices proposing certain additions to the declared turnovers, however, took the view that petitioner did not request for such information in his reply to the show-cause notice, and the said contention is without merit.

10. Assailing the said order, the present Writ Petition is filed.

11. In the instant case, it is not in dispute that 4th respondent sought to make certain additions to the declared turnovers of petitioner for the Assessment Year 2014-15 and 2015-16 on the basis of information which he procured from the R.T.A. behind the back of petitioner, and he did not enclose the said material along with the said show-cause notice dt.11.01.2017, issued to petitioner.

12. It is the basic principle of natural justice that the person who is sought to be proceeded against on the basis of material by a statutory authority must disclose the said material so that he can satisfactorily rebut the same.

13. This, in fact, was not done by 4th respondent.

14. The failure of 4th respondent to furnish the said material has caused serious prejudice to petitioner and disabled the petitioner from giving an effective reply to the show-cause notice dt.11.01.2017.

15. When such a contention was specifically raised before the 3rd respondent, at least, the 3rd respondent should have acceded to the said contention and remitted matter to 4th respondent for fresh consideration after supply of the material being relied upon by the 4th respondent to petitioner.

16. We do not agree with the view of 3rd respondent that non-mention in the reply notice dt.17.02.2017 of the petitioner about the requirement of the R.T.A. data would negate the right of petitioner for such information.

17. We are therefore satisfied that there has been a violation of principle of natural justice warranting exercise of jurisdiction by this Court under Article 226 of the Constitution of India with the impugned order.

18. Accordingly, the Writ Petition is allowed. The Assessment Order in VAT – 305 in A.O.No.24124 dt.11.05.2017 passed by the 4th respondent as well as the order dt.12.06.2019 in the Appeal Order No.1014 passed by the 3rd respondent are both set aside; and the matter is remitted to 4th respondent.

19. The 4th respondent shall supply the material obtained from the R.T.A. Authorities being relied upon by him in the show-cause notice dt.11.01.2017 to petitioner within four (04) weeks from the date of receipt of copy of the order; the petitioner shall submit his response to the show-cause notice within four (04) weeks on receipt of such material / data from the 4th respondent; and the 4th respondent shall then pass an assessment order after considering the reply to the show-cause notice given afresh by petitioner and also the material filed by petitioner to rebut the contents of the show-cause notice, and shall pass a detailed order in accordance with law. No order as to costs.

20. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

JUSTICE T. AMARNATH GOUD

Date: 04.02.2020
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