THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

THE HON'BLE SRI JUSTICE K.LAKSHMAN

<u>WRIT PETITION No.17583 of 2017</u>

<u>ORDER</u>: *(Per the Hon'ble Sri Justice M.S.Ramachandra Rao)*

Heard both sides.

2. Petitioner has assailed the assessment order dt.20.04.2017 passed by the 1st respondent for the assessment of VAT for the years 2015-16 and 2016-17.

3. A show cause notice in Form VAT 305A had been issued to the petitioner proposing to levy VAT of Rs.31,54,273/- . Subsequently, final notice in Form VAT 305A, dt.13.01.2017, was served on the petitioner inviting objections thereto. On 18.01.2017 detailed objections with enclosures running into 30 pages was filed by the petitioner mentioning that petitioner is a supplier of equipment, machineries to DRDO and does not sell goods to any customer other than DRDO. It was denied that the petitioner is having any bulk sale or regular sale and that the rate of applicable tax is 5% and not 14.5% as wasproposed in the show cause notice. Copies of the purchase bills, sales bills and purchase orders were enclosed as annexures to the explanation/objections of the petitioner. The impugned order does not advert to the explanation of the petitioner or to any of the documents enclosed with the explanation/objections of the petitioner and the demand of tax is confirmed by the 1st respondent.

4. Counsel for the petitioner contends that there is total non-application of mind by the 1st respondent to the explanation/objections filed by the petitioner and to the supporting material filed by the petitioner.

5. We agree with the said contentions.

6. Though a counter affidavit is filed justifying the passing of the order by the 1st respondent, it is a settled law that an order passed by a Statutory Authority must contain the reasons for the conclusions in the said order, and the said order cannot be supported by reasons given in an affidavit filed in the Court where the said order is challenged, as held by the Supreme Court in **Mohinder Singh Gill v. Chief Election Commissioner[1].** This legal position is not disputed by the learned Government Pleader for Commercial Taxes.

7. Accordingly, the Writ Petition is allowed and the impugned order dt.20.04.2017 passed by the 1st respondent is set aside and the 1st respondent is directed to consider not only the reply filed by the petitioner on 18.01.2017, but all annexures filed to the said reply, give a personal hearing to the petitioner and pass a fresh order in accordance with law within a period of six (6) weeks.

No order as to costs. Miscellaneous Petitions, if any pending, shall stand dismissed.

M.S. RAMACHANDRA RAO, J

K.LAKSHMAN, J

January 02, 2020.
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[1] 1978 (1) SCC 405