(2014) 06 AP CK 0025

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12911 of 2014

Attal Plastics — APPELLANT

Vs

Commercial Tax Officer — RESPONDENT

Date of Decision : 11-06-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 58 APSTJ 286

Hon'ble Judges : M. Satyanarayana Murthy, J;Ashutosh Mohunta, J

Bench : Division Bench

Advocate : Tejprakash Toshniwal, Advocate for the Appellant; P. Balaji Varma, Special Standing Counsel, Advocate for the Respondent

Judgement

M. Satyanarayana Murthy, J.—This writ petition is filed questioning the assessment order passed by 1st respondent dated 23-01-2014 for the assessment year 2010-2011 under the Central Sales Tax Act (CST Act) on the ground that the 1st respondent did not afford an opportunity of personal hearing under the CST Act and thereby the order is willful and contrary to law. Admittedly the writ petitioner is registered dealer under CST Act, 1956 and under A.P. VAT Act, 2005. The petitioner effected interstate sales of sanitary goods against C-declaration forms and reported the same during the tax period 2010-2011 under the CST Act. The petitioners claimed input tax credit against the output tax liability under the CST Act and claimed the same under the CST VI returns. However, the 1st respondent confirmed the turnover in the assessment year dated 23-01-2014 and issued tax notice dated 31-05-2013 proposing to levy Central Sales Tax (CST) of Rs. 6,36,218/- as against lesser turnover. The petitioner already paid sales tax of Rs. 4,40,661/- while submitting monthly VAT returns, thus raising balance disputed CST of Rs. 1,95,55/- which has not been collected by the petitioner. The 1st respondent without verifying the facts and even without even looking in to the explanation submitted by the petitioner confirmed the showcause notice dated 31-05-2013 arbitrarily and illegally, though the petitioner sought for personal hearing.

2. The 1st respondent did not afford any opportunity of personal hearing and thereby passed assessment order dated 23-01-2014 and it is ex-facie arbitrary and illegal and against the principles of natural justice. Hence, the petitioner sought for a direction by way of Writ of Mandamus to set aside the assessment order dated 23-01-2014.

3. During the course of arguments at the stage of admission, learned counsel for the petitioner contended that in the undated explanation submitted by the petitioner for the show-cause notice dated 31-05-2013 for the assessment year 2010-11 sought for an opportunity of personal hearing. But, it was not afforded and passed an impugned assessment order.

4. Learned Special Standing Counsel for the sales tax contended that the request made in the reply or explanation is not clear and it is subject to the satisfaction of the 1st respondent. Therefore, the 1st respondent passed an order in accordance with law as he felt that no personal hearing need be given; Therefore, the writ petition is not maintainable and prayed to dismiss the same.

5. Considering rival contentions and perusing the material available on record, the only point that arose for consideration is:

"Whether the impugned order dated 23-01-2014 assessing the petitioner to CST for Rs. 6,36,218/- as against the principles of natural justice? If so, is it liable to be set aside?"

6. There is no dispute regarding issue of show-cause notice dated 31-05-2013 in Tin No. 28830172471/2010-11/CST setting out details of turnover and proposing to levy CST on the turnover at 14.5% as it is not covered by C-forms. For which a reply was issued without any date, but the same was received on 21-10-2013 by the 1st respondent as per seal on the first page of the reply. The last para of the reply is relevant in deciding the real controversy and find out whether the 1st respondent is under obligation to afford an opportunity of personal hearing and the same is extracted here under for better appreciation:

"Further if your honours requires any more information, I am ready to submit the same. If your honour are satisfied with the above said explanation and levying central sales tax at 4% in the above said show cause notice in the absence of C declaration form, then no necessity of personal hearing shall be given, otherwise an opportunity of personal hearing shall be given before passing any final order."

7. A bare reading of last para of the reply, it is clear that petitioner requested the 1st respondent to levy CST at 4% if accepted the explanation, pass order without affording any opportunity of personal hearing. However, sought for an opportunity of personal hearing if the 1st respondent is not willing to accept the explanation.

8. As seen from the impugned assessment order dated 23-01-2014, the 1st respondent did not satisfy with the explanation and assessed tax at the rate of 14.5% quantifying the same at Rs. 6,36,218/- and the details to levy of CST are

as follows:-

"The above N.T.O. is taxable as under:-

9. Impugned assessment order clearly shows that the turnover of Rs. 1,01,95,843/- was assessed to tax at 2% as amount was covered by C-form. Whereas, 4% CST was levied on 3,72,146/- and 14.5% CST was levied on turnover of Rs. 1,81,354/- and 4% CST was levied on Rs. 97,78,002/- as the amount was not covered by C-forms. The request was made in the reply notice in the last para extracted above, all together accepted by the 1st respondent and levied tax at 4% in the absence of any C-declarations by levying tax at different rates, when the turnover is covered by C-forms etc., Therefore, the 1st respondent directly accepted the contention of the petitioner and passed an order. In such a case, no opportunity of personal hearing need be given in view of the specific request made by the petitioner in the reply notice, which I extracted in the earlier paras. When making such a request granting opportunity of personal hearing leaving to the discretion of the officer subject to satisfaction is nothing but avoidance of assessment order reserving an opportunity to challenge the same by filing the writ petition. The request made by the petitioner is ambiguous and appears to have made such request to circumvent the provisions of the Act and to avoid payment of tax immediately after passing assessment order forestalling the assessment of CST at different rates. If such conduct of the petitioner is accepted as a genuine request, there will not be an end for finalization of assessment of CST. Therefore, basing on the request of the petitioner it is difficult to hold that 1st respondent did not afford any opportunity of personal hearing.

10. Learned counsel for the petitioner while contending that order passed without affording an opportunity of personal hearing is illegal and drawn the attention of this Court to a judgment of Cassell and Co. Ltd. v. Broome, (1972) 1 All ER 801.

Wherein, the Division Bench of this Court held as follows:

"When a request for opportunity of personal hearing is sought for by the dealer, the assessing authority has to afford opportunity of personal hearing before passing the assessment order. Any order passed without granting the opportunity of personal hearing is against principles of natural justice."

11. The same principle is reiterated in another judgment of Kirby Building Systems India Limited Vs. Deputy Commissioner (CT), Charminar Division and Others, . The same issue came up before Division Bench of this Court and Division Bench held as follows:

"Consequently when an assessee makes a request for personal hearing in revisional proceedings, an opportunity shall be given and any order passed without affording personal hearing is liable to be set aside."

12. Learned counsel further drawn attention of this Court to unreported orders passed by this Court in W.P. Nos. 6978 and 6979 of 2014 dated 18-03-2014 and

W.P. No. 8303 of 2014. Where a Division Bench of this Court set aside the order passed by assessing authority on the ground that no opportunity of personal hearing was afforded to the petitioners. Those judgments of this Court are not in dispute. If really the petitioners directly sought for personal hearing in the reply notice certainly the assessment order is invalid as it was passed without affording an opportunity of personal hearing. But, the request made by the petitioners is ambiguous and it depends upon the satisfaction of the 1st respondent. If the 1st respondent did not satisfy with the explanation in the reply, the petitioner sought for an opportunity of personal hearing. But, here the 1st respondent satisfied with the explanation and passed the impugned order. Therefore, the question of affording an opportunity of personal hearing does not arise.

13. Whereas the Special Government Pleader Commercial Taxes contended that when the dealer failed to avail an opportunity, the question of violation of natural justice or failure to afford reasonable opportunity of personal hearing is not a ground to set aside the assessment order and drawn the attention of this court to a judgment of Cassell and Co. Ltd. v. Broome, (1972) 1 All ER 801. Wherein a Division Bench of this Court held as follows:

"When a opportunity to file objections to the show cause notice was granted, which the dealer failed to avail, the dealer cannot contend that the order passed is against principles of natural justice on the ground that the investigation report, which was the basis for making the assessment, was not furnished to him."

14. The principle laid down in the above judgment is applicable to the facts of the present case for the simple reason that petitioner availed an opportunity and filed objections to the show-cause notice, dated 31-05-2013 and the same was acknowledged by the 1st respondent by affixing seal of the office on 21-10-2013. But, the show-cause notice was received long prior to filing of his reply. In the show-cause notice, the petitioner/dealer is directed to submit written objections if any to the turnover proposed to be assessed within (7) days after receipt of this notice. The order was passed on 23-01-2014. Therefore, the petitioner did not file objections within (7) days as directed in the show-cause notice that did not avail opportunity of filing objections. Therefore, the petitioner is not entitled to challenge the assessment order as he failed to avail the opportunity of filing objections to the show-cause notice within a period of (7) days as directed in the show-cause notice. Even otherwise the request made by the petitioner is not clear and affording opportunity for personal hearing depends upon the satisfaction of 1st respondent. Hence, conduct of the petitioner is blameworthy in seeking personal hearing ambiguously. In such a case failure to afford opportunity of personal hearing is not a ground to set aside the impugned assessment order dated 23-01-2014. Hence, we find no ground to exercise our extraordinary power of judicial review under Article 226 of Constitution of India and thereby, the writ petition deserves to be dismissed. Accordingly the point is answered in favour of the respondents and against petitioner.

15. In the result, the writ petition is dismissed. There shall be no order as to

costs. Miscellaneous petitions pending, if any, shall stand closed.

