
(2017) 01 MAD CK 0258

In the Madras High Court

Case No : 41328 of 2016 & W M P No 35277 of 2016

Hytek Industries

APPELLANT

Vs

Assistant Commissioner (CT)

RESPONDENT

Date of Decision : 05-01-2017

Acts Referred:

Citation : (2017) 01 MAD CK 0258

Hon'ble Judges : Rajiv Shakdher

Bench : SINGLE BENCH

Advocate : Rajiv Shakdher

Judgement

1. This is a writ petition, which is directed against the order dated 07.10.2016.
2. The notice, in this petition, was issued on 24.11.2016. On that date, the petitioner's principal grievance was recorded, which is that, the impugned order had been passed, without service of notice, upon him.
3. More particularly, it is the grievance of the petitioner that the notice dated 29.07.2016, whereby, a proposal was made by the respondent to reverse the ITC and to impose penalty, was not served on the petitioner.
4. This matter was placed before me, on 18.12.2016, when, I had asked the counsel for the respondent to file a counter affidavit accompanied by the postal covers, via which, the notice, if any, was sent to the petitioner, since the stand taken before me, on that date, was that the petitioner had returned the notice.
5. Mr. S. Kanmani Annamalai, learned Additional Government Pleader, who appears for the respondent, today, says that he has obtained a photocopy of the postal cover.
6. To be noted, counter affidavit has not been filed, though, as indicated above, a photocopy of the postal cover has been placed before me.
7. Mr.S. Kanmani Annamalai concedes that the endorsement made on the postal

cover does not show that notice was returned by the petitioner and that, on the other hand, the endorsement was indicative of the fact that the addressee was not found. The exact endorsement on the rear of the postal cover reads : "No such firm in this address".

8. The record shows that insofar as the impugned order dated 07.10.2016 is concerned, that was served on the petitioner, albeit, at the Delhi address, which reads as follows: "Mr. Davindrakumar Goyal, S-83, Greater Kailash - II, 2 nd Floor, New Delhi - 110 048."

9. Quite clearly, the respondent had available in its record, not only the local address of the petitioner, but also his address at Delhi. Therefore, had the notice dated 29.07.2016 been directed to the petitioner's address, at Delhi, which I am told, is his business address, one would not have come to such a pass. Therefore, in my view, all avenues of effecting service on petitioner were not exhausted. The respondent's proposal to reverse ITC and levy penalty, consequently, did not get communicated to the petitioner.

10. The respondent clearly had the Delhi address available, at which the petitioner could have been served, as was ultimately done, vis-a-vis, the impugned order.

11. In these circumstances, I am inclined to agree with the petitioner that the impugned order should be set aside.

12. Accordingly, the order dated 07.10.2016 is set aside, with the caveat that the respondent will have liberty to pass a fresh order, albeit, in accordance with law. For this purpose, the petitioner is directed to appear before the respondent on 31.01.2017 at 11.00 a.m. In case, the said date is not convenient to the respondent, he will be at liberty to fix a fresh date, which will be proximate to the date indicated above.

13. The writ petition is disposed of, in terms of the aforesaid directions. No costs. Resultantly, connected W.M.P. is closed.