***THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN***

***AND***

***THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI***

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**Writ Petition No.22410 of 2015**

**ORDER**: (per Hon'ble Sri Justice Ramesh Ranganathan)

The assessment order dated 17.02.2014 passed by the Commercial Tax Officer, Vijayawada, as affirmed by the 2nd respondent-appellate authority in his order dated 30.08.2014, is questioned in this writ petition as being illegal, arbitrary, in violation of principles of natural justice, and as being contrary to the Circular instructions of the Commissioner of Commercial Taxes.

The 1st respondent passed an assessment order on 17.02.2014 subjecting the petitioner to tax for the period 01.04.2009 to 30.10.2013. Prior thereto, a show cause notice dated 31.01.2014 was issued to the petitioner, a copy of which was served on them on 05.02.2014. By the show cause notice dated 31.01.2014, the petitioner was called upon to show cause, within a period of one week from the date of receipt of a copy of the show cause notice, why they should not be subjected to tax. The one week period, stipulated in the show-cause notice, expired on 12.02.2014. The petitioner claims to have addressed a letter dated 13.02.2014 seeking further time. By the endorsement dated 18.02.2014, the 2nd respondent informed the petitioner that a copy of their letter dated 13.02.2014 was received by them only on 18.02.2014, even before which the assessment order was passed and uploaded on the website of the Department on 17.02.2014 itself. Aggrieved thereby, the petitioner carried the matter in appeal to the 2nd respondent who, by his order dated 30.08.2014, dismissed the appeal. Instead of availing the remedy of a second appeal to the Sales Tax Appellate Tribunal, the petitioner has chosen to invoke the jurisdiction of this Court under Article 226 of the Constitution of India.

Sri K.Rajashekar Reddy, learned counsel for the petitioner, would submit that the impugned order of assessment, and the order of the appellate authority, are liable to be set aside on the ground of limitation, and for violation of principles of natural justice. According to the learned counsel, since the period of limitation under Section 21(4) of the A.P.Value Added Tax Act, 2005 (for short "the Act") is four years from the end of the period for which assessment is to be made, the assessment order, for the period 01.04.2009 to 31.01.2010, is barred by limitation; the petitioner had submitted a representation to the Department on 13.02.2014 itself; and the very fact that a copy of the assessment order was received by the petitioner after 18.02.2014 would show that the assessment order was passed only after receipt of the petitioner's representation.

Section 2(36) of the Act defines "tax period" to means a calendar month or any other period as may be prescribed. It is not in dispute that no rule has been made by the Government prescribing any other period as the tax period. Consequently, the "tax period" continues to remain a calendar month.

Under Section 21(3) of the Act, where the authority prescribed is not satisfied with a return filed by the VAT dealer, or the return appears to be incorrect or incomplete, he shall assess, to the best of his judgment, within four years of the due date of the return, or within four years of the date of filing of the return, whichever is earlier. Section 20 of the Act relates to returns and self-assessments, and Sub-Section (1) thereof stipulates that every dealer, registered under Section 17 of the Act, shall submit such return or returns, along with proof of payment of tax, in such manner within such time, and to such authority, as may be prescribed. Rule 23(1) of the A.P.Value Added Tax Rules, 2005 stipulates that a return, to be filed by a VAT dealer under Section 20, shall be in Form VAT 200 and it shall be filed within 20 days after the end of the tax period.

For the tax period ie a calendar month, the return is required to be filed by the Dealer by the $20^{th}$ of the next month. Consequently, in terms of Section 21(3) of the Act, since the assessment order was passed on 17.02.2014, the assessment for the period 01.04.2009 to 31.12.2009 alone would be barred by limitation. For the tax period from 01.04.2009 to 31.12.2009, the assessment order is set aside as barred by limitation.

The submission of Sri K.Rajashekar Reddy, learned counsel for the petitioner, of violation of principles of natural justice is not well founded. The show cause notice dated 31.01.2014 was served on the petitioner on 05.02.2014 asking them to show cause within a period of one week from the date of receipt of the show cause notice. The one week period expired by 12.02.2014, and the assessment order was passed thereafter on 17.02.2014 recording that the petitioner had not shown cause. The contention urged, on behalf of the petitioner, by Sri K.Rajashekar Reddy, that the representation dated 13.02.2014 was submitted on the same day, is not supported by any evidence on record.

From the endorsement of the Commercial Tax Officer dated

18.02.2014, it appears that the representation of the petitioner was received in the office of the 1st respondent only on 18.02.2014. While the assessment order dated 17.02.2014 may have been served on the petitioner after 18.02.2014, the fact remains that the said assessment order was uploaded on the website of the Department on 17.02.2014 itself. It is evident, therefore, that the assessment order was passed on 17.02.2014 as it is only thereafter that the said order could have been uploaded on the website of the Department. In the absence of any material on record, to support the petitioner's plea that their representation dated 13.02.2014 was submitted to the Department on the very same day, we see no reason to disbelieve what the 1st respondent has stated. As a result, the 1st respondent cannot be faulted in passing an assessment order, without awaiting a reply to the show cause notice from the petitioner beyond the period stipulated in the show cause notice for submitting objections.

While the earlier Circular of the Commissioner required "***the dealers to be given two or three opportunities of 10 to 15 days each***" to file their objections, the Commissioner, by his Circular dated 31.05.2013, deleted the clause "***the dealers should be given two or three opportunities of 10 to 15 days each***" and substituted it with the words "***the dealers should be given reasonable opportunity***". All that the Circular of the Commissioner dated 31.05.2013 requires the 1st respondent to do is to provide the petitioner a reasonable opportunity. The petitioner was given the opportunity to submit their objections within one week. If the petitioner was of the view that the one week period stipulated in the show cause notice, was insufficient or not reasonable, they should have sought further time to file their objections before an assessment order was passed, and not thereafter. The plea of violation of principles of natural justice does not, therefore, merit acceptance.

Sri K.Rajashekar Reddy, learned counsel for the petitioner, would seek to put forth his submissions on merits. The contentions now sought to be put forth before us were not put forth before the Assessing Authority. The Appellate Authority refused to accept the submission of the petitioner that their books of accounts etc., were soiled/lost during floods holding that the authorised representative, at the time of hearing, had failed to file any documentary evidence, such as I.T. returns, copies of books of accounts i.e. purchase ledger, sale ledger etc. or any logical working statement relating to the 126 teakwood log trees; and there was no explanation as to how this number of 126 teakwood logs, and its value as Rs.59,52,967/-, was arrived at. The appellate authority held that, as no documentary evidence was shown or filed to support the petitioner's claim that certain teakwood logs had drifted during floods, or regarding calculation of the number of drifted teakwood logs or their value, the appeal necessitated dismissal.

Sri K.Rajashekar Reddy, learned counsel for the petitioner, would draw attention of this Court to a certificate issued by the Tahsildar to contend that the said certificate records that approximately 126 logs were washed away in the floods. The basis on which the said certificate was issued, or the enquiry caused in this regard, was not placed before the Appellate Authority. The finding of the Appellate Authority that no documentary evidence was filed to support the claim, such as purchase ledger, sale ledger etc., cannot be held to be perverse.

The jurisdiction, which this Court exercises under Article 226 of the Constitution of India, is supervisory and not appellate. Under Article 226 of the Constitution of India, this Court would not re-appreciate the evidence on record, or record findings on facts. The orders of the Assessing and Appellate Authorities do not, therefore, necessitate interference, except to the limited extent that the assessment made for the period 01.04.2009 to 31.12.2009 is barred by limitation. To this limited extent, the assessment order is set aside. In all other respects, it is upheld.

The writ petition is disposed of accordingly. The Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

**RAMESH RANGANATHAN, J**

**M.SEETHARAMA MURTI, J**

Date:20.11.2015.

JSU

***THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN***

***AND***

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**Date: 20.11.2015**

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