THE HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 33527 of 2015

ORDER: (per Hon'ble Sri Justice Challa Kodanda Ram)

The Assessment Order dated 13.08.2014 is challenged before this Court on the ground that there was no opportunity of hearing as the petitioner did not receive notice prior to the assessment. Yet another ground that is raised is that for the period 11.07.2011 to 11.11.2011 an assessment was already made on 17.11.2012 and in the said assessment, the tax assessed has already been paid. The petitioner relies on the judgment of the Hon'ble Supreme Court in **State of Karnataka v. Ayyanahalli Bakappa and Sons**[1] to support his contention that there cannot be two assessment orders for the same period.

2. Learned Special Government Pleader, on the other hand, opposes the writ petition and points out that in the Show Cause notice that has been issued on 24.06.2014, it was categorically stated that the audit authorities sent notices dated 26.05.2014 and 07.06.2014 through registered post but the said notices came to be returned by the postal authorities on 05.06.2014 and 20.06.2014, respectively, with endorsements "door locked" and "not available". Further, a

final notice was issued on 24.06.2014 for which also there was no response.

3. Heard both the learned counsel.

4. Having considered the arguments of both the learned counsel, we find that though the Show Cause notice dated 24.06.2014 categorically states that the earlier notices dated 26.05.2014 and 07.06.2014 could not be served, which assertion is not denied by the petitioner, the question still remains whether the final notice dated 24.06.2014 was served on the petitioner. On this aspect, the specific assertion of the petitioner that the Show Cause notice dated 24.06.2014 was not served on the petitioner stands un-rebutted. Even assuming, for the sake of argument, that the earlier notices dated 26.05.2014 and 07.06.2014 were served on the petitioner, if the case of the petitioner that the Show Cause notice dated 24.06.2014 was not served is to be accepted, which is the final notice that was issued to the petitioner prior to passing the Assessment Order dated 13.08.2014, the Assessment Order would still suffer from the vice of having been passed in violation of principles of natural justice. Further, considering the specific assertion of the petitioner that the goods in issue are exempted goods, and considering the fact that assessment had already been made for a part of the assessment period, in the facts of the present case, interests of justice would be served if the Assessment Order dated 13.08.2014 is set aside giving liberty to the respondent authorities to pass a fresh assessment order. However,

considering the totality of facts of the case, the Assessment Order dated 13.08.2014 is set aside only on the condition that the petitioner deposits 50% of the tax amount within a period of four weeks from today. Further, the petitioner would be at liberty to submit his explanation to the Show Cause notice dated 24.06.2014 within four weeks from today. The respondent authorities shall endeavour to complete the assessment and pass a fresh assessment order within eight weeks from the date of receipt of a copy of this order.

5. The writ petition stands disposed of, accordingly. No costs. Miscellaneous petitions, if any pending, shall stand closed.

G. CHANDRAIAH, J

CHALLA KODANDA RAM, J

26th October, 2015

ksm

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[1] (1988) 3 Supreme Court Cases 587