THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLR SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.36859 OF 2015

ORDER: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

The order under challenge in this Writ Petition is the proceedings of the Additional Commissioner, Commercial Taxes (Legal) dated 02.11.2015 rejecting the revision filed by the petitioner against the order of the Appellate Deputy Commissioner rejecting the petitioner's request for grant of stay pending disposal of the appeal. By way of an amendment, the notice issued on 19.11.2015 by the first respondent, under Section 29 of the Andhra Pradesh Value Added Tax Act, 2005 ("the Act" for brevity), to the bankers of the petitioner, calling upon them to pay the balance amount of Rs.3,45,07,827/-, is also put in issue.

The facts, to the limited extent necessary, are that an assessment order was passed on 14.05.2015 for the tax periods
2011-12 to 2013-14. Aggrieved thereby, the petitioner preferred an appeal on 19.07.2015. While the petitioner's appeal is said to be still pending adjudication before the Appellate Deputy Commissioner (ADC), the stay application filed by them was rejected by the ADC on 28.09.2015. Soon thereafter, a recovery notice was issued on 01.10.2015 which the petitioner claims to have received on 06.10.2015. The second recovery notice was issued on 09.10.2015 which the petitioner claims to have received on 12.10.2015.

Against the order of the appellate Deputy Commissioner dated 28.09.2015, rejecting stay pending appeal, the petitioner filed a revision before the Additional Commissioner on 14.10.2015. The Additional Commissioner is stated to have issued a personal hearing notice on 14.10.2015 fixing the date of personal hearing as 19.10.2015, which the petitioner claims that they did not receive. The second personal hearing notice dated 21.10.2015 was issued fixing the date of hearing as 31.10.2015. The petitioner submitted a letter dated 30.10.2015 wherein they specifically stated that they did not receive the earlier personal hearing notice dated 14.10.2015; their counsel was not in station; he was not in a position to appear on

31.10.2015; and another date convenient to the Additional Commissioner may be fixed, and they be intimated of the next date of personal hearing. The petitioner also sought an opportunity of personal hearing before the Additional Commissioner took a final decision in the matter.

In the impugned order dated 02.11.2015, the Additional Commissioner held that two hearing notices were given to the dealer, but in vain; the dealer was not prosecuting the case; they had filed an adjournment letter seeking further time on the ground that their legal counsel was out of station; this ground was vague; they did not even state the name of the legal counsel; there may be a claim of deemed stay of collection of the disputed tax, if the revision application is not disposed of; the revision application, in Form APP 406, should have, in terms of Rule 39 (2) of the A.P. VAT Rules, 2005 ("the Rules" for brevity), been accompanied by the certified copies of the orders of assessment and the stay rejection orders passed by the ADC; as against this requirement, only photocopies of the impugned orders were filed; besides, not even photocopies of the assessment order, questioned before the ADC and considered in the impugned order by the ADC, were filed; and the enclosures had not been enclosed. Consequently, the revision application was rejected as not maintainable. In the impugned order, the Additional Commissioner does not even deal with the petitioner's contention that they did not receive the first notice of personal hearing dated 14.10.2015, and yet proceeds to hold that two hearing notices were given to the dealer but in vain.

Sri Karan Talwar, learned counsel for the petitioner, would submit that the Additional Commissioner ought to have given them an opportunity of personal hearing to enable them to explain why they could not file certified copies of the order; the defect, in not filing certified copies of the ADC's order along with the revision petition, is curable; the petitioner, having filed a copy downloaded from the web site of the Commercial Tax Department, had satisfied the requirement of Rule 39(2) of the Rules; and the Additional Commissioner had erred in not entertaining the revision on this flimsy ground.

On the other hand, Mr. Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes, would submit that the requirement of a certified copy is statutorily prescribed under Rule 39(2) of the Rules; and, consequently, the Additional Commissioner was justified in refusing to entertain the petitioner's revision application.

Rule 39(2) of the Rules stipulates that the application, filed under Section 31 (3)(b), should be in duplicate, one of the copies shall be affixed with the court-fee stamp of the value of three rupees and shall also be accompanied by a certified copy of the order of assessment or order of penalty. It is no doubt true that Rule 39(2) requires the application for stay to be accompanied by a certified copy of the assessment order. The form, in which the application for stay is required to be submitted under Rule 39(2) of the Rules, is in Form APP 406. Form APP 406 requires the revision application to be accompanied with the original order, or with a certified copy thereof, unless the omission to produce such order or copy is explained to the satisfaction of the revisional authority.

As the Additional Commissioner has issued a personal hearing notice, and Form APP 406 enables the dealer to explain, to the satisfaction of the revisional authority, their omission to produce the order or certified copy, the Additional Commissioner ought not to have rejected the said application without affording the petitioner a personal hearing. We may not be understood to have held that this explanation can be furnished, long after the revision application is filed. Ordinarily the explanation, for the omission to produce the copy of the order, should be furnished in the revision application itself. However, in the present case, the Additional Commissioner has himself considered it proper to provide the petitioner an opportunity of a personal hearing. The petitioner is, therefore, entitled to explain their failure to furnish a certified copy of the assessment order, and the appellate authority's order, during the course of personal hearing before the Additional Commissioner.

The impugned order is, therefore, set aside. The Additional Commissioner, after affording the petitioner an opportunity of personal hearing wherein they are entitled to explain their omission in not filing certified copies of the assessment order and the order of the ADC along with the application, shall pass an order afresh and in accordance with law at the earliest, and in any event within two (2) weeks from today. As the impugned order is set aside, the Additional Commissioner is now required to pass an order afresh. The notice dated 19.11.2015, issued under Section 29 of the Act with Form VAT notice 206 dated 19.11.2015, is merely a consequence of the impugned order passed by the Additional Commissioner. As the impugned order dated 02.11.2015 has been set aside, the consequential proceedings dated

19.11.2015 is also set aside. Needless to state that this order shall not prevent the respondents from taking action in accordance with law, after the revisional authority passes an order afresh.

The Writ Petition is disposed of, accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

24th November 2015

Note: Issue CC by tomorrow

B/O

RRB