THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
And
THE HON'BLE SRI JUSTICE S.RAVI KUMAR

WRIT PETITION No.15791 of 2015

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

At the request of both Sri Vemireddy Bhaskar Reddy, learned counsel for the petitioner, and Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, the Writ Petition is being disposed of at the stage of admission.

The petitioner's complaint is of violation of principles of natural justice, and of not being afforded a reasonable opportunity of being heard. A show cause notice was issued to the petitioner on 18.02.2015 asking her to show cause notice why tax, under the Andhra Pradesh Value Added Tax Act, 2005 (for short, 'the Act') for the period from 01.04.2009 to 31.03.2015, should not be levied for the hotel business being carried on by her at the A.P.S.R.T.C. bus stand, Tirupathi. The petitioner submitted her reply thereto on 01.04.2009 requesting thirty days time to submit her reply. By proceedings dated 12.03.2015, her request for adjournment was rejected on the ground that the case was likely to be barred by limitation shortly. She was, however, granted an opportunity of personal hearing on 17.03.2015.

By her letter dated 17.03.2015 the petitioner informed the respondents that she went to Apollo hospitals, Chennai on 14.02.2015 for treatment of her joint pains and, for the said reason, she could not appear before him personally. She requested the assessing authority to grant her further time to submit her reply to the show cause notice, and to attend the hearing in person. Along with the said letter she enclosed xerox copies of the Doctor certificates, medical bills etc. By the impugned order dated 31.03.2015, the assessing authority levied tax of Rs.39,56,532/- and called upon her to pay the said amount within thirty days.

Sri V.Bhaskar Reddy, learned counsel for the petitioner, would submit that, as the show cause notice refers to the report of the Regional Vigilance and Enforcement Officer dated 01.07.2013, a copy thereof ought to have been supplied to the petitioner along with the show cause notice; her request for grant of adjournment was reasonable, and ought not to have been denied; and failure, to provide her an opportunity of being heard, would necessitate the order being set aside on the ground of violation of natural justice.

On the other hand Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, would submit that the period for which the petitioner was being subjected to tax is from 01.04.2009 to 31.03.2015; a part of the assessment period would have been barred by limitation if an order of assessment was not passed on or before 31.03.2015; and it is in such circumstances that the assessing authority was constrained to deny her request for grant of further time to submit her reply to the show cause notice.

Under Section 37 of the Act, notwithstanding anything in Sections 21 and 32, where an assessment or re-assessment is made in respect of a dealer pursuant to an order, in consequence of or to give effect to an order of any Court, such assessment, re-assessment shall be made within three years from the date of receipt of such order by the prescribed authority. Once an order is passed by this Court, setting aside an assessment order, the period of limitation gets automatically extended by a further period of three years.

Sri V.Bhaskar Reddy, learned counsel for the petitioner, would submit that, in view of Section 37 of the Act, any order of this Court, directing the assessing authority to re-assess the petitioner to tax, would enable them to pass a re-assessment order within three years from the date of receipt of a copy of the order of this Court and, in such circumstances, the apprehension of the respondents, that the assessment would be barred by limitation, is unfounded.

In view of the fact that Section 37 of the Act extends the period of limitation and, as it is evident that the petitioner has been denied an opportunity of being heard, we consider it appropriate to set aside the assessment order, and direct the second respondent to pass an order afresh in accordance with law. The assessing authority shall, within four weeks from today, make available a copy of the Vigilance report to the petitioner. The petitioner shall, within thirty days from the date of receipt of a copy of the Vigilance report, submit her reply to the show cause notice. It is open to the assessing authority, thereafter, to pass an assessment order afresh after affording the petitioner the opportunity of a personal hearing. The entire exercise, culminating in an order of re-assessment being passed, shall be completed within a period of four months from the date of receipt of a copy of this order. It is made clear that, in case the petitioner does not submit her objections within the time afore-stipulated, it is open to the second respondent to pass an assessment order afresh in accordance with law.

The Writ Petition stands disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

S.RAVI KUMAR, J

05th June, 2015.

Note:

Furnish C.C. of the order within ten days.

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