HON'BLE SRI JUSTICE G.CHANDRAIAH

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HON'BLE SRI JUSTICE CHALLA KODANDA RAM

W.P.No. 31711 of 2015

DATE: 30.09.2015

Between:

M/s. Balakrishna Traders .. Petitioner

And

Deputy Commercial Tax Officer

and two others .. Respondents

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O R D E R:- (per Hon'ble Sri Justice Challa Kodanda Ram)

The assessment order dated 24.07.2015 passed by the

2nd respondent-Deputy Commercial Tax Officer is challenged in this writ petition on the ground that the petitioner was not given liberty to place the records before the assessing officer, as such, the order passed is in gross violation of the principles of natural justice.

The impugned order reveals that earlier, on 30.06.2015, notice was sent to the petitioner by Registered Post with acknowledgement due, but it was returned unserved with an endorsement "the dealer was not available at the address which was furnished at the time of registration". The order further indicates that again on 13.07.2015, notice in Form VAT 305A was issued to the petitioner proposing to levy tax of Rs.7,02,914/- by giving an opportunity to file their written objections if any, within a period of seven days from the date of receipt of the notice which was admittedly served on the dealer on 16.07.2015. In response to the notice, the dealer submitted a letter dated 21.07.2015 requesting to grant 10 days' time on the ground of his brother's
ill-health and financial hardship, and admittedly, it was dispatched on 22.07.2015. Subsequently, the dealer submitted another letter dated 28.07.2015 filing objections to the notice and also sought for opportunity of personal hearing to enable the dealer to produce relevant records. The impugned order further shows that even though several notices were issued to the dealer for production of books of account, yet the dealer could not produce any material for completion of audit, as such, the 2nd respondent, without acceding to the request of the dealer and by treating that there is no material placed before him, passed the impugned order dated 24.07.2015 confirming the proposed tax.

Heard the learned counsel for the petitioner and the learned Government Pleader for Commercial Tax and perused the material placed on record.

It is to be taken note of that the impugned order does not reveal that the requests made by the petitioner on two occasions vide letters dated 21.07.2015 and 28.07.2015 for grant of time for production of relevant books of account, have been rejected. From this, it is evident that the dealer has not been afforded an opportunity of personal hearing to enable him to produce relevant records for assessment. In the absence of rejection of the requests made by the petitioner, passing of the assessment order by the assessing officer would definitely amount to infringement of principles of natural justice.

In similar circumstances, this Court, by order dated 11.08.2015 passed in W.P.No. 24954 of 2015, had taken a view that there is violation of principles of natural justice especially when the request made by the petitioner seeking time is not refused. Hence, the impugned order is liable to be set aside. However, considering the submission made by the learned Government Pleader that the assessee has been dodging the matter without responding to several notices which have been issued earlier, we deem it appropriate to dispose of the writ petition with the following direction:

> "The petitioner – dealer is directed to be present before the assessing officer on 19.10.2015 and 20.10.2015 and co-operate with him for completion of assessment proceedings. It is made clear that if the assessee does not choose to make himself available on those days, the assessing officer would be at liberty to pass orders based on the material available with him including the material which the petitioner is alleged to have sent through registered post with acknowledgement due. It is also left open to the petitioner to supply all the material on which he relies."

With the above direction, this writ petition is disposed of. No order as to costs.

Miscellaneous petitions, if any pending in this writ petition, shall stand disposed of as infructuous.

G. CHANDRAIAH, J

30.09.2015

CHALLA KODANDA RAM, J

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