THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

WRIT PETITION NO.15910 OF 2016

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

Heard Sri M.V.J.K.Kumar, learned counsel for the petitioner and Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes and, with their consent, the Writ Petition is disposed of at the stage of admission.

The proceedings under challenge in this Writ Petition is the assessment order dated 09.03.2016 subjecting the petitioner to tax for a sum of Rs.38,42,475/-. In the assessment order, the assessing authority has held that, while the petitioner had requested to arrange a personal meeting with the Salt Dealers from whom they claimed to have purchased salt, all the Salt Dealers had appeared on 26.02.2016; the dealer had chosen not to appear in person on the said date for cross examination; and, accordingly, the petitioner was being subject to tax for the aforesaid amount.

The petitioner claims to be carrying on business in the sale of cement pipes, salt, and other items. They claim to have purchased salt from Salt Dealers within the State and to have affected sales thereof. In the impugned order, the assessing authority held that the invoices produced by the petitioner, in support of their plea of having purchased salt, were not genuine; and their claim of having sold salt was also false. As the petitioner sought an opportunity to cross examine persons, from whom they claimed to have purchased salt, the assessing authority fixed 26.02.2016 as the date on which the petitioner could appear and cross examine these persons who, according to the assessing authority, had informed him that they had never sold salt to the petitioner.

The contention urged on behalf of the petitioner by Sri M.V.J.K.Kumar, learned counsel for the petitioner, is that, because of unavoidable circumstances, the petitioner was unable to appear before the assessing authority on that date; and another opportunity be directed to be given to enable them to examine these dealers. An affidavit is filed in WP.MP.No.38299 of 2016 wherein it is stated that the petitioner had gone to pay homage to one of his family members at Kadapa; he was forced to stay there till 05.03.2016; and he had, in fact, filed a reply on 04.01.2016 wherein he had stated that the sale could not be subjected to tax. The petitioner also states that they are willing to cross examine the sellers who have sold salt to them, and to produce the purchasers; and the impugned order be set aside, and the matter remitted to the assessing authority.

With a view to give another opportunity to the petitioner, we consider it appropriate to direct the assessing authority-second respondent to afford them an opportunity to produce witnesses and have them examined on 28.12.2016. As the burden is on the petitioner to establish that the transactions are genuine, it is for them to produce witnesses (persons from whom they purchased the goods and those to whom they sold the goods) before the second respondent on 28.12.2016. In case the petitioner fails to produce these witnesses, it is open to the assessing authority to proceed, without giving them any further time, to pass an assessment order afresh in accordance with law.

The impugned order dated 09.03.2016 is set aside, and the Writ Petition stands disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, ACJ)

(A.SHANKAR NARAYANA, J)

7th December 2016
RRB