THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.4095 OF 2016

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

The proceedings, under challenge in this Writ Petition, is the revisional order dated 31.12.2015 whereby the assessment order dated 01.05.2013 was revised and tax of Rs.28,99,446/- was determined as due and payable by the petitioner.

The petitioner is a registered VAT dealer on the rolls of the Commercial Tax Officer, Narasaraopet Division, and is engaged in the business of distribution of cosmetics. They are the authorised distributors for Hindustan Uniliver Limited (HUL), having entered into an agreement with them for distribution of their products in Chilakaluripet Town. It is the petitioner's case that, in terms of the agreement, they are required to sell the goods at a price including gross profit as fixed by HUL at 4.76%. The assessing authority however, based on alleged market intelligence regarding the sale price charged by the petitioner, fixed the gross profit on food products @ 17%, on soaps @ 14% and on cosmetics @ 14%. Neither was the petitioner put on notice prior to passing the assessment order nor does the assessment order refer to the basis on which market intelligence is said to have revealed the gross profit to be as aforementioned. While it does appear that in reply to the intimation by the Commercial Tax Officer, that information be provided, the petitioner had informed that they did not have any details regarding the business relationship between HUL and retail dealers, they submitted details of the sales made by them, and the customer ledger maintained by HUL with regards their account for the years 2009-10 to 2012-13, as soft copies in a CD form.

While the petitioner appears to have brought to the notice of the assessing authority, during the course of personal hearing, that the gross profit allowed to them was 4.76%, the assessing authority held that this percentage was contrary to the gross profit declared by them as per their audited financial statements and, on this basis, he concluded that the assessee was not maintaining proper books of accounts.

Sri M.V.J.K.Kumar, learned counsel for the petitioner, would submit that, while the margin provided to the petitioner by HUL is 4.76%, they had, in turn, incurred certain expenditure which would result in a lesser gross profit margin; and this is the reason for the variance between the percentage of gross profits as allowed to them by HUL, and the actual gross profits which they earn on the distribution of these goods.

It is wholly unnecessary for us to dwell on this aspect as the assessing authority has not even chosen to accept 4.76% as the gross profit and has, instead, fixed a far higher gross profit percentage without disclosing the basis on which he had arrived at the conclusion that the gross profit earned by the petitioner should be 14/17%. Not only are these jurisdictional facts required to be dealt with in the assessment order, these facts ought also to have been referred to in the show-cause notice which would have enabled the petitioner to submit an effective reply thereto. Failure on the part of the assessing authority to provide information gathered by him behind the petitioner's back, to the petitioner herein, is in violation of principles of natural justice. We consider it appropriate, in such circumstances, to set aside the assessment order and direct the assessing authority to pass a fresh assessment order after providing the petitioner details of the information gathered by him behind the petitioner's back by way of a show cause notice, give them an opportunity of being heard, and thereafter pass a reasoned order afresh in accordance with law. The entire exercise, culminating in a fresh assessment order being passed, shall be completed within a period of three (3) months from the date of receipt of a copy of this order.

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, J)

(M.SATYANARAYANA MURTHY, J)

27th June 2016
RRB