THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

Writ Petition No.10487 of 2008

ORDER: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

The relief sought for in this writ petition is to declare the action of the 1st respondent in passing assessment order dated 31.03.2006 for the assessment year 2002-03, a copy of which was served on the petitioner on 24.10.2007 (with a delay of one and half years) without giving sufficient reasons, as being arbitrary and illegal.

For the assessment year 2002-03, an assessment order was passed on 31.03.2006, and a copy thereof was served on them on 24.10.2007. The limitation, prescribed under the Andhra Pradesh General Sales Tax Act, 1957, for passing an assessment order is three years. An assessment order was therefore required to be passed, for the assessment year 2002-03, on or before 31.03.2006. While the assessment order is said to have been passed on the last day before limitation, it was served more than a year and half thereafter on 24.10.2007.

The Supreme Court, in ***State of Andhra Pradesh vs. Ramakishtaiah & Co.***[1], held that, in the absence of any explanation for the inordinate delay in service of the order, the Court may presume that the order was not made on the date it was purported to have been made, and that it was made after expiry of the limitation period. While the law laid down in the aforesaid judgment, no doubt requires the respondents to assign reasons why the assessment order was not served soon after it was passed,

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[1] 1994(93) STC 406

it is specifically stated in the counter affidavit that the assessment order was served by affixture, as the petitioner had closed their business and was evading service of notice.

While Rule 58 of the Andhra Pradesh General Sales Tax Rules, 1957 (for short "the Rules") prescribes the mode of service, Clause (d) thereof stipulates that, if any or all of the modes i.e (a) to (c) is not practicable, then the notice can be served by affixture on some conspicuous place at the dealer's last known place of business or residence. Rule 58 (d) of the Rules is attracted, where service under Clauses (a) to (c) thereof are not practicable. In ***Commissioner of Sales Tax vs. M/s.Subash & Company***[2], the Supreme Court held that service of notice through affixture can be resorted to where the other modes of service are not practicable. It is the specific case of the respondents herein that the petitioner had closed their business, and was evading service of notice. As the petitioner had closed their business, the mode of service prescribed in Clauses (a) to (c) of Rule 58 is, evidently, not practicable.

Rule 53 of the Rules requires a dealer, who discontinues his business, to inform that fact to the assessing authority concerned within 30 days thereafter. It is not even asserted, in the writ affidavit, that the petitioner had intimated the assessing authority of the fact that they had closed their business or that they had informed him of the address to which notices, if any, should be sent to. We see no reason, therefore, to fault the respondents in resorting to service of notice by affixture. We are satisfied with the explanation given for the delay in effecting service of notice. The

[2] Judgment in Appeal (Civil).No.1374 of 2003 dated 17.02.2003

specific averments, in the counter affidavit in this regard, have not been denied by way of a reply affidavit. In such circumstances, the petitioner is not entitled to the relief sought for in the writ petition.

The Writ Petition fails and is, accordingly, dismissed. Miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(A.SHANKAR NARAYANA, J)

27th December, 2016
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THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

<u>Writ Petition No.10487 of 2008</u>

Date: 27.12.2016

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