THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT PETITION Nos.16371, 25549, 25685, 25690, 25854 of 2006, 109 and 325 of 2007.

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

The proceedings under challenge in these writ petitions are the orders passed by the Deputy Commissioner (CT), Guntur, dated 07.05.2006.

Facts, to the extent necessary, are that the petitioners are assessees on the rolls of the Commercial Tax Officer, Piduguralla. They purchased limestone from quarry owners, and coal mainly from M/s.Singareni Collieries Limited, Kothagudem for the manufacture of Lime from out of limestone by burning coal in the Lime Kiln. They were assessed to tax by the Commercial Tax Officer under the A.P. General Sales Tax Act, 1957 (for short "the Act"). The Deputy Commissioner (CT), Guntur re-assessed the petitioners to tax, under Section 14(4)(a) of the Act, alleging suppression of turnover based on the quantity of coal purchased by them from M/s. Singareni Collieries Limited.

Aggrieved thereby the petitioners carried the matter in appeal before the Sales Tax Appellate Tribunal, Hyderabad which set aside the orders passed by the Deputy Commissioner under Section 14(4)(a) of the Act, and remanded the matter to the assessing authority to pass an order afresh after making available the documents, on which they placed reliance, to the petitioners herein. The Deputy Commissioner appears to have contacted M/s. Singareni Collieries Limited, and to have sought the records relating to purchase of coal by the petitioners herein. M/s.Singareni Collieries Limited appear to have expressed their inability to furnish the information sought for, on the ground that the records were very old and were not available.

In the orders under challenge in these writ petitions, the Deputy Commissioner records that, despite giving an opportunity to the dealers permitting them to peruse all the records/details on the basis of which the revision was proposed, they neither availed the opportunity nor did they respond to the offer given to them; although they were given multiple opportunities, the dealers had failed to respond; and, in such circumstances, he was constrained to pass a fresh order. The Deputy Commissioner confirmed the assessment proposed in the earlier show cause notice dated 15.02.2006.

While it does appear that the petitioners did not avail the opportunity provided to them to peruse the records, the Deputy Commissioner has also not assigned any reasons as to why the petitioners were liable to be subjected to tax under the Act. The Deputy Commissioner was not justified in merely confirming the earlier show cause notice, as the assessment order passed pursuant thereto has been set aside by the Tribunal.

While failure on the part of M/s. Singareni Collieries Limited to furnish the required information would not disable the Deputy Commissioner from assessing the petitioners to tax based on any other material available with him, he could not have levied tax on the petitioners herein on the basis of information obtained behind their back, without either furnishing copies of the said documents to them/without providing them an opportunity of perusing these documents.

As the impugned orders were passed not only in violation of principles of natural justice but are also bereft of reasons, they are set aside. The Deputy Commissioner shall, after giving the petitioners an opportunity of being heard including an opportunity to peruse all the documents on which he proposes to rely on, pass orders afresh and in accordance with law. It is made clear that if the petitioners fail to avail the opportunity of perusing the documents on the date fixed by the Deputy Commissioner, it is open to him to proceed and pass orders afresh, under Section 14(4)(a) of the Act, in accordance with law. The entire exercise, culminating in fresh orders being passed under

Section 14(4)(a) of the Act, shall be completed within a period of four months from the date of receipt of a copy of this order.

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

(RAMESH RANGANATHAN, ACJ)

(U.DURGA PRASAD RAO, J)

03rd August 2016
JSU