HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
and
HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

WRIT PETITION No.28058 of 2016

ORDER : (**Per HACJ**)

The proceedings, under challenge in this writ petition, is the assessment order dated 07.01.2016, the subsequent order of penalty dated 01.02.2016 and the consequential notice for payment of unpaid tax and penalty dated 12.07.2016.

While several grounds are urged in challenge to the validity of the assessment order, it would suffice to note that the assessment order was passed recording that, despite opportunities being given to the petitioner to file their objections in reply to the notice of assessment in Form VAT-305A dated 10.08.2015, no reply was filed thereto by the petitioner.

Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, while placing before us the record, would fairly state that the record discloses the petitioner having filed their objections on 19.10.2015, a copy of which was received by the Deputy Commercial Tax Officer on the very same day i.e. 19.10.2015. The assessment order, passed more than a month thereafter, makes no reference to the receipt, of the letter of objection dated 19.10.2015, by the respondents, nor to its contents. The premise, on which the assessment order was passed, was that the petitioner had not filed their objections to the show cause notice. As it is now evident that the petitioner had filed their objections on 19.10.2015, the impugned order of the 1st respondent must be, and is accordingly, set aside for violation of principles of natural justice. Needless to state that this order shall not preclude the respondents from taking into consideration the objections filed by the petitioner, giving them an opportunity of a personal hearing, and to thereafter pass an assessment order afresh in accordance with law. The entire exercise, culminating in a fresh assessment order being passed, shall be completed at the earliest and, in any event, within two months from the date of receipt of a copy of this order.

As the order of penalty was passed consequent to the assessment order which has now been set aside, the order of penalty must be set aside. Likewise the notice, for payment of unpaid tax and penalty, dated 12.07.2016 must also be set aside. Needless to state that, after a fresh assessment order is passed, it is always open to the respondents, if they so choose, to initiate penalty proceedings afresh in accordance with law.

The writ petition stands disposed of accordingly. No order as to costs. Pending miscellaneous applications, if any, shall stand closed.

RAMESH RANGANATHAN,

ACJ

U. DURGA PRASAD RAO, J

31st August 2016

ajr