THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
And
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT PETITION No.23414 of 2015

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Heard Sri V.Bhaskar Reddy, learned counsel for the petitioner, and Sri J.Anil Kumar, learned Special Standing Counsel for Commercial Taxes, and, with their consent, this Writ Petition is disposed of at the stage of admission. The short question, which arises for consideration in this Writ Petition, is whether the petitioner was required to be put on notice before the excess tax paid by them was forfeited.

Sri V.Bhaskar Reddy, learned counsel for the petitioner, would draw attention of this Court to Section 57(6) of the Andhra Pradesh Value Added Tax Act, 2005 to contend that the assessee is required to be given an opportunity of being heard before the excess tax paid by them is forfeited. Sri J.Anil Kumar, learned Special Standing Counsel for Commercial Taxes, would contend that the said provision is applicable only to cases where the assessee is liable to penalty with forfeiture; and, in the present case, forfeiture is not as a consequence of an order of penalty.

An order, forfeiting the excess tax paid by the dealer, deprives them of the money which they would, otherwise, have been entitled to. As the assessee is sought to be denied their claim for refund of the excess tax paid by them, and the amount so paid is intended to be forfeited, any such action for forfeiture could only have been taken after complying with principles of natural justice and, even in the absence of a specific statutory provision in this regard, principles of natural justice must be read into the unoccupied interstices of the statute. (***The Institute of Chartered Accountants of India vs. L.K.Ratna***[1]).

As the impugned order, forfeiting the excess tax paid by the petitioner, was passed without putting the petitioner on notice, and without giving them an opportunity of being heard, the impugned order is set aside. The second respondent shall, after putting the petitioner on notice, after giving them an opportunity of being heard and, if they so desire, a personal hearing, pass an order in accordance with law at the earliest and, in any event, not later than three months from the date of receipt of a copy of this order.

The Writ Petition is disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

U.DURGA PRASAD RAO, J

26th July, 2016.
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[1] AIR 1987 SC 71