THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No.19509 of 2016

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

Heard Sri V.Bhaskar Reddy, learned counsel for the petitioner, and Sri M.Govind Reddy, learned Special Standing Counsel for Commercial Taxes (TG) and, with their consent, the writ petition is disposed of at the stage of admission.

The proceedings under challenge in this writ petition is the assessment order passed by the 1st respondent dated 28.03.2016, forfeiting Rs.3,39,96,949/-. This order is subjected to challenge by the petitioner on several grounds, including for violation of principles of natural justice, and as being barred by limitation.

Sri V.Bhaskar Reddy, learned counsel for the petitioner, would draw our attention to the show cause notice issued by the 1st respondent dated 07.01.2013, informing the petitioner that, as against the total tax liability of Rs.3,03,15,768/- , the petitioner had paid Rs.6,43,12,717/- (through TDS/cheque); they had paid an excess amount of Rs.3,39,96,949/-; as the order showed that the petitioner had paid an excess amount of nearly Rs.3.40 crores, the petitioner was not aggrieved thereby and did not submit their reply to the show cause notice; however, the impugned assessment order was passed forfeiting the said sum of nearly Rs.3.40 crores without putting the petitioner on notice and without giving them an opportunity of being heard; the impugned assessment order is barred by limitation under Section 21 (3) and under Section 57 (5) of the AP VAT Act (for short, 'the Act'); if Section 21 (3) of the Act is applied, then, for the period 01.04.2011 to 28.02.2012, the assessment is barred by limitation; and if Section 57 (5) of the Act is attracted, then the assessment for the entire period, from 01.04.2011 to 31.03.2012, would be barred by limitation.

Sri M.Govind Reddy, learned Special Standing Counsel for Commercial Taxes (TG), would submit that the limitation prescribed for forfeiture under Section 57 (5) of the Act is not applicable; the petitioner, having collected tax, has retained the said sum; and such retention amounts to unjust enrichment on his part. Section 57 (6) of the Act enables the authority to pass an order of penalty with or without forfeiture on condition that the dealer is put on notice, and is asked to show cause why such penalty should not be imposed upon him. In the present case, no such notice was, admittedly, issued to the petitioner.

As the impugned order of assessment must be set aside on this short ground, it is wholly unnecessary for us to examine the other contention urged on behalf of the petitioner, by Sri V.Bhaskar Reddy, that the assessment order is also barred by limitation under Section 21 (3) and Section 57 (5) of the Act. The impugned order is, accordingly, set aside.

It is made clear that, on the respondents putting the petitioner on notice calling upon them to show cause why the excess amount paid by them should not be forfeited, it is always open to the petitioner herein to raise all such contentions as are available to them in law including that the order dated 28.03.2016 is barred by limitation under Sections 21 (3) and 57 (5) of the Act. Needless to state that, on such objections being filed, the 1st respondent shall consider the same and pass a reasoned order in accordance with law.

The writ petition stands disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 22.06.2016

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