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

Writ Petition No.41670 of 2015

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

The proceedings under challenge in this writ petition is the order of assessment of turnover tax dated 23.09.2014, and the penalty order dated 30.09.2014, passed by the 4th respondent. The petitioner claims that both these orders are arbitrary and illegal, and necessitate being set aside.

The petitioner was hitherto carrying on business in manufacture and sale of packaged drinking water in the unit at Mushidipally Village, Vizianagaram District. An audit was conducted by the Assessing Officer for the tax period 2010-11 to 2013-14, and a demand of Rs.1,14,506/-, on the differential turn over in the show cause notice dated 26.07.2014, was confirmed by the 4th respondent. The petitioner claims that the impugned order was not communicated to him due to closure of the business in the month of June 2014. Thereafter, vide proceedings dated 30.09.2014, the order of penalty was passed.

During the course of arguments, Sri V.Ganesh Bhujanga Rao, learned counsel for the petitioner, contended that the respondents had not even issued a notice to the petitioner, and he was denied an opportunity of being heard. As this contention required examination of the records, we directed Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes, to produce the records. Today, on a perusal of the records, we find a copy of the authorisation in Form 565, under Rule 65(7) of the A.P.Value Added Tax Rules, 2005 (for short "the Rules") dated 23.09.2014. The Form 565 dated 23.09.2014 shows that the petitioner had authorised Sri G.P.V.Hanumantha Rao to attend, on his behalf, before the Assessing Authority in connection with the assessment of M/s.Durga Drinking

Water. On a copy of Form 565 dated 23.09.2014 being shown to him, Sri V.Ganesh Bhujanga Rao, learned counsel for the petitioner, would submit that, in terms of Section 66(a) of the Act, an authorisation can be given only to a relative or to a person regularly employed; and, since Sri Hanumantha Rao is neither the petitioner's relative nor is he employed by him, such an authorisation could not have been accepted by the Assessing Authority.

Sri Sri V.Ganesh Bhujanga Rao, learned counsel for the petitioner, would fairly state that the petitioner had authorised Sri Hanumantha Rao to appear, on his behalf, before the Assessing Authority. The submission that, such an authorisation is contrary to Section 66 of the A.P.Value Added Tax Act, 2005 (for short "the Act") is only to be noted to be rejected. Having given an authorisation, in terms of the Rules, in favour of Sri Hanumantha Rao, the petitioner cannot now be heard to contend that, while he may have given such an authorisation, the Assessing Authority should have conducted an enquiry, to ascertain whether or not Sri Hanumantha Rao was the petitioner's relative or was regularly employed by him, before acting on such an authorisation.

What is even more disconcerting is that the petitioner should have suppressed facts in the affidavit filed before this Court. While, in the writ affidavit, the petitioner states that he has not been given an opportunity to file written objections, the submission made by Sri Ganesh Bhujanga Rao, learned counsel for the petitioner, across the Bar, was that the petitioner was not put on notice and was not given an opportunity of being heard. The fact that the petitioner had given an authorisation, in favour of Sri Hanumantha Rao, has been suppressed in the affidavit filed in support of the writ petition. This Court was made to believe that the assessment order was passed without providing the petitioner an opportunity of being heard. It is evident from a bare reading of the assessment order, and the records now produced before us, that the Assessing Authority had afforded an opportunity of being heard, and that Sri Hanumatha Rao had, in fact, submitted a letter on the same date agreeing to pay the amount due with penalty at 25%.

Sri V.Ganesh Bhujanga Rao learned counsel for the petitioner, would submit that, since Hanumantha Rao had agreed to pay the tax and penalty, this Court should direct him to do so, and absolve the petitioner of his liability. The proceedings, under challenge in this writ petition, is an assessment order. The *inter-se* disputes, if any, between the petitioner and Sri Hanumantha Rao cannot be examined in proceedings where the validity of the assessment order is in issue. We are satisfied that the writ petition has been filed suppressing relevant facts, and is in gross abuse of the process of the Court. We consider it appropriate, in such circumstances, to dismiss the writ petition with exemplary costs of Rs.25,000/- (Rupees Twenty Five Thousand Only) which the petitioner shall pay the respondents within four weeks from today, failing which it is open to the respondents to recover the said amount in accordance with law.

The writ petition is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 19.02.2016
JSU

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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