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

WRIT PETITION NO.16711 OF 2016

ORDER: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

Heard Sri A. Sudershan Reddy, learned Senior counsel appearing on behalf of the petitioner and Mr. Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes 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 in Form VAT 305 dated 31.03.2016 on the ground of violation of principles of natural justice.

Sri A. Sudershan Reddy, learned Senior Counsel appearing on behalf of the petitioner, would submit that, for the assessment period 01.04.2010 to 31.03.2013, a notice in Form VAT 305-A was issued on 01.03.2016; a copy thereof was received by the petitioner on 09.03.2016; another notice was issued on 19.03.2016 calling upon the petitioner to submit their objections within seven days, failing which orders would be passed as per the provisions of the A.P. VAT Act, 2005 ("the Act" for brevity); and the petitioner submitted their reply on 30.03.2016 seeking three months time which was not granted.

Mr. Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes, would submit that the petitioner did not submit any reply to the show cause notice though a copy thereof was served on them on 09.03.2016; even to the subsequent notice dated 19.03.2016, whereby they were granted one week's time, the petitioner did not submit any reply; they had merely sought an adjournment by their letter dated 30.03.2016; a part of the assessment period would have been barred by limitation if the assessment order had not been passed on 31.03.2016; and it is in such circumstances that the impugned order of assessment came to be passed.

By their letter dated 30.03.2016, the petitioner informed the respondents that they could not submit their reply to the show cause notice earlier as their management team was in prison, and the documents had been seized by the CID and other departments; their office had been shifted from one location to another; and all concerned persons who had left their organisations were being recalled to undertake the work of the Commercial Tax department. The petitioner assured the Commercial Tax Officer that they would file their objections within three months. They requested that they be granted another three months time from the date of the letter (letter dated 30.03.2016) to file their objections. It is their complaint that, even without granting them three months time, the impugned order of assessment came to be passed on the very next day i.e., on 31.03.2016 which is violation of principles of natural justice.

The extended period of limitation, under Section 21(5) of the Act, is six years. Consequently, granting the petitioner adjournment upto 30.06.2016 would have resulted in the assessment, relating to April 2010 and May 2010, getting barred by limitation. At the same time it must not be lost sight of that the assessment proceedings commenced with the issuance of a show cause notice only on 01.03.2016, and an assessment order was passed in the very same month on 31.03.2016. The submission of Sri A. Sudershan Reddy, Learned Senior Counsel, that the petitioner had suffered prejudice thereby cannot therefore be brushed aside.

Section 37 of the Act stipulates that, notwithstanding anything contained under Section 21 of the Act, where assessment is made pursuant to an order of any Court, in a proceeding otherwise than by way of appeal or revision, such assessment shall be made within three years from the date of receipt of such order from the prescribed authority. Consequently, the order passed by this Court would automatically result in extending the period of limitation by a further period of three years from the date of receipt of a copy of this order.

While Sri A. Sudershan Reddy, learned Senior Counsel appearing on behalf of the petitioner, would request that the petitioner be granted three months time from today to submit their reply to the show cause notice, we see no reason to accede to such a request as the petitioner had themselves, by their letter dated 30.03.2016, sought three months time from the date of the said letter to file their objections. We consider it appropriate in such circumstances to set aside the impugned assessment order and grant the petitioner time till 30.06.2016 to submit their reply to the show cause notice. It is made clear that, in case the petitioner fails to submit their reply to the show cause notice on or before 30.06.2016, it is open to the first respondent to pass a fresh order of assessment in accordance with law without granting them any further time in this regard.

The Writ Petition stands disposed of, accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

6th June 2016
RRB