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

Writ Petition Nos.42717 & 42947 of 2015

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

The assessment order and the penalty order are subjected to challenge in these writ petitions mainly on the ground of violation of principles of natural justice. While they admit receiving the earlier audit notice, and the show cause notice proposing to levy tax, the petitioners deny receipt of all subsequent notices, including the notice of personal hearing, the reminders allegedly sent thereafter, and even the assessment order and the consequent order of penalty. It is their case that it is only after their bank account was attached for non-payment of tax, did they come to know of an assessment order, and the consequent penalty order being passed and, it is in such circumstances, that they have invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

Sri V.Bhaskar Reddy, learned counsel for the petitioner, would draw attention of this Court to the documents, which the petitioner claims to have applied for and to have obtained certified copies of, to submit that even the signatures in the documents vary. Learned counsel would also submit that, while the assessment order refers to notices having been served, the respondents have now contended, in their counter affidavit, that, since notices could not be served, they had informed the petitioner telephonically.

Rule 64 of the A.P.Value Added Tax Rules, 2005 (for short "the Rules") prescribes the mode of service of notices. While clause (2) of Rule 64 of the Rules requires the certificate of service to be signed by the person serving the notice as evidence of the facts stated therein, no such certificate is found in the records placed before us. Rule 63 relates to nomination of a responsible person and, under sub-rule (1) thereof, the dealer is required to nominate a person to receive any notice on his behalf. Sub-rule (4) of Rule 63 of the Rules stipulates that, where a person fails to comply with clause (a) of sub-rule (3), the Commissioner or Officer authorised shall nominate a person for the purposes specified in sub-rule(1).

The Rules provide for adequate safeguards to ensure that the notice is served only on the persons referred to therein. In the present case, there is a dispute regarding the very identity of the person on whom the respondents claim to have served the notices. In any event no certificate, as stipulated under Rule 64(2) of the Rules, is found in the record. We consider it appropriate, in such circumstances, to set aside the assessment order and the consequent order of penalty.

As the petitioner admits receipt of the show cause notice, proposing assessment in Form VAT-305A, they are permitted to file their objections to the show cause notice within two weeks from today. In case any such objections are filed within the time stipulated hereinabove, the Assessing Authority shall cause notice of a personal hearing, strictly in accordance with Rule 64 of the Rules, and, after affording the petitioner an opportunity of a personal hearing, shall pass an order afresh and in accordance with law. It is made clear that, failure on the part of the petitioner to file their objections to the show cause notice, within the time stipulated hereinabove, would enable the respondents, without granting any further time, to pass a fresh assessment order; and, thereafter, to initiate penalty proceedings in accordance with law.

The writ petitions are accordingly disposed of. 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: 14.03.2016

JSU

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

Writ Petition Nos.42717 & 42947 of 2015

-

-

-

Date: 14.03.2016

JSU