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

WRIT PETITION No.24463 of 2016

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

Heard Sri K. Srinivasa Rao, Learned Counsel for the petitioner and Sri J. Anil Kumar, Learned Special Standing Counsel for Commercial Taxes and, with their consent, the Writ Petition is disposed of at the stage of admission. The penalty order passed by the 1st respondent dated 16.07.2016, in respect of the period April, 2011 to January, 2016, is questioned in this Writ Petition as an order passed in violation of principles of natural justice.

The petitioner, a dealer registered on the rolls of the 1st respondent, is carrying on business of trading in UHT milk. They were assessed to tax, by order dated 08.06.2016, for the period April, 2011 to January, 2016. Consequent thereto, a show cause notice was issued by the first respondent, in Form VAT 203 A dated 21.06.2016, proposing to levy 100% penalty under Section 53(3) of the Act. By their letter dated 04.07.2016, the petitioner sought ten days time to file their objections to the show cause notice. They claimed to have filed their objections by their letter dated 12.07.2016, served on the respondents on 15.07.2016, enclosing a copy of the appeal grounds filed in the appeal preferred against the order of assessment. They also requested the assessing authority for a personal hearing.

The impugned order of penalty was passed on 16.07.2016 confirming the earlier proposal to levy penalty. The order of penalty dated 16.07.2016 is questioned in this Writ Petition on the ground that the order was passed without considering the petitioner's reply to the show cause notice which was submitted in the office of the assessing authority on 15.07.2016 itself. As the Commercial Tax Department had acknowledged receipt of the petitioner's reply on 15.07.2016, and the order of penalty dated 16.07.2016 makes no reference thereto, we asked Sri J. Anil Kumar, Learned Special Standing Counsel, to ascertain whether a copy of the petitioner's reply dated 12.07.2016 was received by the respondent in their office on 15.07.2016. Today Sri J. Anil Kumar, Learned Special Standing Counsel, has placed the records before us which does show receipt, of the petitioner's reply to the show cause notice, by the Commercial Tax Department on 15.07.2016. Learned Special Standing Counsel would submit that, as the reply was received on 15.07.2016, just a day prior to 16.07.2016 when the impugned order was passed, it does appear that the said reply was not brought to the notice of the assessing authority.

As the order of penalty was passed without considering the petitioner's reply to the show cause notice, and without giving them an opportunity of a personal hearing as sought by them, the impugned order must be, and is accordingly, set aside. The assessing authority shall at the earliest, and in any event not later than two months from the date of receipt of a copy of this order, pass a penalty order afresh after giving the petitioner an opportunity of a personal hearing. The Writ Petition stands disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs.

RAMESH RANGANATHAN, J

U. DURGA PRASAD RAO, J

Date: 26.07.2016

MRKR