THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE MS. JUSTICE J. UMA DEVI

WRIT PETITION Nos. 7648, 7653, 7662 and 7756 of 2017

COMMON ORDER: ***(Per VRS,J)***

While two out of the present four writ petitions are against the orders of assessment under the Central Sales Tax Act, 1956, the other two writ petitions are against the orders of penalty passed as a consequence to the orders of assessment.

2. Heard Mr. G. Narendra Chetty, learned counsel for the petitioner.

3. Mr. Shaik Jeelani Basha, learned special standing counsel for Commercial Taxes (AP), takes notice for the respondents.

4. As against the orders of assessment, the petitioner should actually file a statutory appeal. But, he has come up with the writ petitions, on the ground of violation of the principles of natural justice.

5. Strictly speaking, the Assessing Officer was not guilty of not granting adequate opportunity to the petitioner, as can be seen from the following paragraph in the order impugned in the writ petition, W.P.No.7756 of 2017:

> *"Accordingly, a show cause notice was issued in the reference 3rd cited to the dealer calling for objections if any*

against the proposed assessment. The same was served on the dealer on 26.02.2016. But, the dealer has not responded. Finally, a final and hearing notice in the reference 4th cited was also issued to the dealer, giving personal hearing opportunity. The same also served on the dealer on 24.06.2016. In response to the notice vide ref.5th cited above the dealer has attended personally on 27.06.2016 before the Commercial Tax Officer-I, Proddatur. But, he has not produced single document and not filed any objection except pressuring the assessing authority to pass the orders in favour of him. Vide ref.6th cited above the dealer has filed a letter dt.28.06.2016 and stated that his health is not well and requested two months time to file his objections. Through the endorsement reference 7th cited, dealer has been allowed a time of 22 days to file his objections. Further the dealer filed a letter on 20.07.2016 vide ref.8th and requested again two months time to submit the information. Accordingly, a final notice was issued in the reference 9th cited, given a final opportunity up to 25.09.2016 to file his objections. The same was served on the dealer on 20.09.2016. Though receiving all above notices, the dealer has neither filed objections nor produced books of accounts and 1st copies of way bills C-forms, etc. for completion of assessment except recommending the assessing authority in several ways. Therefore, it is construed that the dealer has no objections to file against the proposed assessment and he is prolonging the matter to avoid levy of tax as proposed in show cause notice. Hence, the proposed assessment for the year 2013-2014 under CST Act is hereby confirmed."

6. Therefore, if we go strictly by application of law relating to the principles of natural justice, the petitions deserve to be thrown out. But still, we would like to give one more opportunity to the petitioner, for the simple reason that by virtue of a Memo issued by the Government, the tax payable, even if everything else found in the impugned order is taken to be correct, may not be 5%, but could be 2%. Since this is an aspect which the Assessing Officer has not taken note of, we would like to give one opportunity to the petitioner, subject, however, to imposition of costs. Therefore, all the four Writ

Petitions are allowed and the impugned orders are set aside, subject to the following conditions:

a. The petitioner shall appear before the Assessing Officer on 20.03.2017 at 11.00 a.m. along with whatever documents and objections he has, relating the assessment years 2013-2014 and 2014-2015.
b. The petitioner shall also pay costs of Rs.20,000/- (Rupees twenty thousand only) in favour of the 1st respondent.
c. After perusing the objections and the documents filed by the petitioner, the 1st respondent may pass fresh orders, in accordance with law, taking into account the Government Memo.

Consequently, miscellaneous petitions if any pending in the writ petitions shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J.

8th March, 2017

Note: Issue C.C. today.
(b/o)
cbs

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AND

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(allowed)

8th March, 2017

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