IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

The Hon'ble Sri Justice V.RAMASUBRAMANIAN
and
The Hon'ble Sri Justice ABHINAND KUMAR SHAVILI

WRIT PETITION Nos.28628 AND 28835 OF 2017

Between:

W.P. No.28628 of 2017:

M/s.Sri Sai Teja Electricals & General Stores,
Shop No.7, K.V.R. Complex, Kanchikacherla,
Krishna District, Rep. by its Proprietor
Mr. Digumarti Sreenivasa Rao S/o.Bhaskar Rao

...Petitioner

Vs.

The State of Andhra Pradesh,
Rep.by its Principal Secretary,
Revenue (CT), Secretariat, Amaravathi,
Guntur District and others.

.. Respondents

AND

W.P. No.28835 of 2017:

M/s.Sri Sai Teja Electricals & General Stores,
Shop No.7, K.V.R. Complex, Kanchikacherla,
Krishna District, Rep. by its Proprietor
Mr. Digumarti Sreenivasa Rao S/o.Bhaskar Rao

...Petitioner

Vs.

The State of Andhra Pradesh,
Rep.by its Principal Secretary,
Revenue (CT), Secretariat, Amaravathi,
Guntur District and others.

.. Respondents

For Petitioner : Sri P. Balaji Varma

For Respondents : Sri S. Suribabu.

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION Nos.28628 AND 28835 OF 2017

COMMON ORDER: *(per V. Ramasubramanian, J)*

The petitioner has come up with the above writ petitions challenging an order of assessment and an order levying penalty.

2. Heard Mr. P. Balaji Varma, learned counsel for the petitioner and Mr. S. Suribabu, learned Special Standing Counsel for the Commercial Tax (A.P.).

3. The main grievance of the petitioner is that by the order of assessment impugned in the first writ petition, a levy is made with respect to the period from 2006-07 upto the year 2013-14 and that except a portion of the period for the year 2013-14, the assessment in respect of the remaining period has become time barred.

4. In the light of such a stand, taken by the petitioner, we ordered notices in the writ petitions on 13.09.2017 and granted an interim stay.

5. Today, Mr. Suribabu, learned Special Standing Counsel submitted on instructions that the petitioner is an unregistered Dealer, who had supplied material to Gram Panchayats and that those supplies should be deemed to be sales, making him liable to pay tax. According to the learned Special Standing Counsel, the petitioner has actually collected tax but not paid.

6. However, the learned counsel for the petitioner has filed an affidavit before this Court denying the contention that they collected tax from their customers.

7. Thus, the question as to whether the petitioner actually collected tax or not has become a disputed question. The same cannot be gone into in a writ petition under Article 226 of the Constitution of India.

8. It is seen from the impugned order that the petitioner did not file any written statement or objections and did not also appear in person. Therefore, we are of the considered view that by directing the petitioner to appear before the Assessing Officer and raise all objections, the writ petitions can be disposed of.

9. Accordingly, the Writ Petitions are allowed, the impugned orders are set aside and the matters are remanded back to the Assessing Officer. The petitioner shall file their objections, treating the impugned orders as the show cause notices, within a period of three (3) weeks from the date of receipt of a copy of this order. Thereafter, the Assessing Officer shall fix a date for personal hearing on which the petitioner shall produce all necessary records. The Assessing Officer shall then pass orders in accordance with law.

10. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

ABHINAND KUMAR SHAVILI, J

October 12, 2017
KTL