

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

WRIT PETITION No.34843 of 2016

Between:

Smt. R. Shanthi

PETITIONER

And

1. Deputy Commercial Tax Officer – II, Chittoor –II Circle, near Devi Theatre, Tirupathi Road, Chittoor, Chittoor District, A.P., and another.

RESPONSENTS



THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

WRIT PETITION No.34342 of 2016

ORDER: (Per Hon'ble Sri Justice V. Ramasubramanian)

The petitioner has come up with the above writ petition challenging the action of the respondent in confiscating the goods lying in the shop and also collecting the value of the goods as security.

2. Heard Mr. G. Narendra Chetty, learned counsel for the petitioner and Mr. S. Suri Babu, learned Special Standing Counsel for the respondents.

3. Even at the time when we ordered notice in the writ petition we pointed out two defects in the impugned order. The defects were (1) that Sections 45(7) (b) and 46 (2) would have no application to the case on hand; and (2) that the fundamental requirement of "reason to believe" in terms of Section 43 was not satisfied.

4. Today, the respondents have filed a counter admitting that by oversight a wrong provision of law was quoted. The actual provision of law to be applied to the case of the petitioner was Section 43, as per the counter affidavit filed by the assessing officer.

5. It is true that quoting of a wrong provision of law may not vitiate an order at all times. But some times they do.

6. *Dehors* the above, the order itself does not disclose how the 1st respondent arrived at a reason to believe. The phrase "reason to believe" in taxing statutes has a particular connotation. The requirement for showing reason to believe is completely absent.

7. Therefore, the writ petition is allowed directing the respondents to return the cheques collected from the petitioner within a

period of two weeks from the date of receipt of a copy of this order, as the goods have already been released.

8. As a sequel, pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

JUSTICE V. RAMASUBRAMANIAN

JUSTICE J. UMA DEVI

31st January, 2017
Js.



THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

WRIT PETITION No.34843 of 2016



Date: 31-01-2017

Js.