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

Writ Petition Nos.13225 and 13471 of 2013

Common Order:

Both these writ petitions arise out of the orders passed by the Deputy Commissioner (CT), revising the assessment for the years 2005-06 and 2006-07 under the Central Sales Tax Act, 1956.

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

3. The orders passed on revision are challenged in these writ petitions on 4 grounds, namely, (1) that the very same officer who passed orders of assessment and allowed certain exemptions, sat as the Revisional Authority and decided the issue, (2) that the officer who issued the pre-revision notices in the year 2010 and heard the matter was different from the officer who passed the present order, which is violative of the principles laid down in *Automotive Tyre Manufacturers Assn. v. Designated Authority*[1], (3) that the exemption originally granted in respect of Form-H, could not have been rejected on the ground that they were not in respect of the relevant quarters, in view of the decision of this Court in *Mahabalwswarappa v. Assistant Commissioner*[2] and (4) that in any case, the original order of assessment dated

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[1] (2011) 2 SCC 258
[2] 56 (2013) APSTJ 23

28-02-2009 could not have been revised after the expiry of the period of limitation of 4 years.

4. We have carefully considered the above grounds of attack to the impugned orders.

5. It is true that the very same officer who passed orders of assessment, namely, Dr. N.Narasimham has, upon promotion, became the Deputy Commissioner (CT) and passed the orders impugned in these writ petitions, which is contrary to the law well-settled. It is also true that the present incumbent to the post of Deputy Commissioner did not hear the petitioner. On the basis of a pre-revision show cause notice issued on 23-6-2010 and the hearing conducted by the previous incumbent, the present officer has passed the impugned orders. Therefore, on both 1st and 2nd grounds, the impugned orders are to go. Though the learned counsel for the petitioner submitted that the impugned orders should go in entirety for the 3rd and 4th grounds of attack, we do not think that we will go into it for the present. Once we find that the authority which passed the impugned orders did not have the jurisdiction, we would not take up the other issues for consideration. But at the same time, we cannot fail to record our displeasure at the manner in which the previous incumbent got the revision notices issued on 23-6-2010 kept pending for the expiry of the period of limitation, if the petitioner was right in his contention. We are not expressing an opinion that the orders were actually barred by limitation

but we will leave it to the wisdom of the present incumbent to decide the law correctly.

6. Therefore, the writ petitions are allowed, the impugned orders are set aside and the matters are remanded back to the Deputy Commissioner (CT). He shall give an opportunity of hearing to the petitioner, hear them on all aspects and pass orders afresh. The miscellaneous petitions, if any, pending in these writ petitions shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

27th February, 2017.
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms JUSTICE J.UMA DEVI

<u>Writ Petition Nos.13225 and 13471 of 2013</u>

27th February, 2017.
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