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

WRIT PETITION No. 9077 of 2017

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

The petitioner has come up with the above writ petition, challenging a notice for payment of arrears of entertainment tax allegedly due from him.

2. Heard Mr. G. Narendra Chetty, learned counsel for the petitioner, and Mr. T. Vinod Kumar, learned special standing counsel for Commercial Taxes (Telangana), appearing for the respondents.

3. When the writ petition came up for orders as to admission, on 03.04.2017, the learned special standing counsel produced records, after perusing which, we passed the following order:

> *"It appears from the record produced by the learned special standing counsel that someone has received the show cause notice as well as the assessment order sent to the correct address of the writ petitioner for the year 2011-2012. The burden of proof to show that who signed the acknowledgment card was related to the petitioner cannot be put on the department. Therefore, there will be an interim stay on condition that the petitioner deposits Rs.2,00,000/- within a period of two (2) weeks from today.*
>
> *Post for orders on 17.04.2017."*

4. Pursuant to the above order, the petitioner has deposited a cheque for Rs.2,00,000/-, dated 13.04.2017. The Department is yet to send it for collection. The learned counsel for the petitioner assures

that as and when the cheque is sent for collection, the same can be honoured. Based upon the said assurance, the writ petition is taken up for disposal.

5. Though the case of the petitioner is that the show-cause-notice as well as the assessment order for the year 2011-2012 were not served on him, it was found from the records that someone had received the show-cause-notice as well as the assessment order for the year 2011-2012. Therefore, at the most, the case can come under the category of non-availment of the opportunity given by the respondents and not under the category of not affording sufficient opportunity.

6. Once it is seen that the petitioner did not avail the opportunity, in the facts and circumstances in which the petitioner is now placed, we are of the considered view that one more opportunity could be granted to him, especially in the light of the payment now made. After all the case relates to the conduct of an entertainment schedule by the petitioner in the annual All India Industrial Exhibition. The rides provided in giant wheel etc. by the petitioner will only be for a part of the period. Therefore, the discipline that is expected of the registered dealers cannot certainly be expected of persons like the petitioner.

7. In view of the above, the Writ Petition is disposed of, to the following effect:

1) Upon realization of the cheque given by the petitioner, the 2nd respondent shall serve a copy of the order of assessment already passed.

2) The order of assessment so served by the 2nd respondent shall be treated as a show-cause-notice and the petitioner shall file a reply within fifteen (15) days of service of notice.

3) Thereafter, the 2nd respondent shall fix a date for personal hearing and pass orders afresh.

4) Insofar as the demand for the assessment year 2010-2011 is concerned, even the show-cause-notice was addressed to some other person and not to the petitioner and, hence, the demand in respect of the same is set aside.

5) Since the order of assessment is directed to be treated by this order as a show-cause-notice, and also since the service of the said order on someone at the office of the registered address of the petitioner is found out from the records, the petitioner cannot put the issue of limitation against the respondents.

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

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J.

24th April, 2017
cbs

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN √

AND

THE HON'BLE MS. JUSTICE J. UMA DEVI

Writ Petition No. 9077 of 2017
(disposed of)

24th April, 2017

cbs