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

+ Writ Petition Nos.5274 and 5448 of 2017

% 28-4-2017

M/s. Parameswara Overseas Pvt. Ltd.,
Sy.No.113, Timmapur Village, Kothur Mandal,
Mahaboobnagar District, State of Telangana,
Rep. by its Director Ambati Rathanala Narasimhulu
... Petitioner

Vs.

$ 1. State of Telangana, Rep. by its Prl. Secretary
to Govt., Revenue (CT-II) Dept.,
Secretariat Bldg., Saifabad, Hyderabad;
and 5 others
... Respondents

! Counsel for the Petitioner: Mr. M.V.J.K. Kumar

Counsel for Respondents 1 to 4: Mr. J.Anil Kumar,
Special Standing Counsel

< Gist:

> Head Note:

? Cases referred:
Nil.

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Common Order: (per V.Ramasubramanian, J.)

The petitioner in both these cases is a dealer under the Telangana Value Added Tax Act, 2005. He has come up with the above writ petitions, aggrieved by two actions on the part of the Commercial Tax Officer, namely, (i) the collection of tax and twice the amount of penalty for the release of the lorries and the detained goods and (ii) the collection of a sum of Rs.72 lakhs towards alleged dues of Value Added Tax.

2. Heard Mr. M.V.J.K. Kumar, learned counsel for the petitioner and Mr. J.Anil Kumar, learned Special Standing Counsel for the respondents 1 to 4.

3. According to the counter affidavit of the Assistant Commissioner, Enforcement Wing, 6 vehicles of the petitioner were detained at the check post and notices in Form 610 were issued alleging various irregularities. An extension notice was also given for obtaining the goods on 24-01-2017.

4. It is the case of the respondents that as per the transit passes, the goods were moving from the State of Tamil Nadu to the State of Maharashtra, but the goods were actually offloaded in the State of Telangana and sold here without proper documentation. According to the Assistant Commissioner of Commercial Taxes, Enforcement Wing, his counter part from Maharashtra confirmed in writing by

a letter dated 24-01-2017 that no such dealer by name Sona Impex or Patanga Agro Tech or Shree Rattan Agro Industries was in existence in Nanded. Therefore, the Assistant Commissioner suspected the clandestine import of goods into the State of Telangana, with fabricated transit passes.

5. According to the Assistant Commissioner, the petitioner paid the tax as well as twice the amount of penalty for the release of the 6 detained lorries and the goods and that the petitioner also confessed to his liability to the extent of Rs.72 lakhs, paid the amount and thereafter came up with the above writ petitions.

6. Let us assume for a minute that a voluntary statement was made by the petitioner without any coercion or undue influence and all the payments were willingly made by the petitioner. But even then, the payment of Rs.72 lakhs taken by the Assistant Commissioner on the ground of admitted liability, cannot stand the scrutiny of law. The law contemplates a procedure to be followed both for levy and for collection. In this case, even according to the Assistant Commissioner, there was neither a self assessment nor a best of judgment of assessment. The assessment existing in the mind of the Assessing Officer or existing in the mind of the dealer, are not sufficient to fasten the liability upon the dealer. Therefore, the collection of Rs.72 lakhs on the specious plea that there was an admission of liability is completely contrary to the procedure prescribed by law.

Therefore, the 1st writ petition filed by the dealer in W.P.No.5274 of 2017 is liable to be allowed without a wink of the eye, as the collection of the amount was neither based upon self assessment nor based upon the best of judgment assessment. Hence, the writ petition is allowed and the respondents are directed to return the amounts already collected and they are also prohibited from collecting further amounts on the basis of the cheques available with them.

7. Coming to the 2nd writ petition, though it is claimed by the petitioner that the amounts were collected under duress and in the circumstances in which the petitioner was placed, nevertheless, the fact remains that due to such payment coercive or otherwise, the petitioner was able to get his goods and the lorries released. Today, the question is as to whether the respondents could have collected the tax as well as the penalty together under threat of detention. Before a notice for confiscation could be issued, the respondents are entitled to collect the amount and seek security for twice the amount of penalty, in terms of Section 45(7)(a) of the Telangana VAT Act, 2005. Though it is contended by the learned counsel for the petitioner that the provisions of Section 45(7)(a) would apply only to a case of confiscation, we do not agree. It is only under Section 45(7)(b) that a confiscation takes places.

8. However, whenever an action is proposed to be taken under Section 45(7)(a), a reasonable opportunity should be

given against the proposed penalty. Therefore, it is contended that the tax as well as twice the amount of tax as penalty was collected without a reasonable opportunity and hence the amount collected should be refunded.

9. Technically the petitioner is right. We are fully in agreement with him. But such a contention if had been made before the release of the goods, could have been easily accepted and we could have directed the respondent to give an opportunity before passing order. But if after the release of the goods, the said contention is taken, we will have to direct the respondents even to return the tax amount. That will lead to an absurd situation. Therefore, insofar as W.P.No.5448 of 2017 is concerned, the same is disposed of only with a limited direction to the concerned officer to pass an order of assessment, after following the procedure prescribed by law, within a period of 4 (four) weeks from the date of receipt of a copy of this order.

10. Accordingly, W.P.No.5274 of 2017 is allowed and W.P.No.5448 of 2017 is disposed of. The miscellaneous petitions, if any, pending in these writ petitions shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

28th April, 2017.
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms JUSTICE J.UMA DEVI

Writ Petition Nos.5274 and 5448 of 2017
(per VRS, J.)

28th April, 2017.
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