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

Writ Petition Nos.8294 and 8298 of 2017

Common Order:

Aggrieved by an order of assessment passed in respect of the period from June, 2014 to March, 2015, under the Andhra Pradesh Value Added Tax Act, 2005 and aggrieved by an order of penalty passed as a consequence, the dealer has come up with the present writ petitions.

2. Heard Mr. M.V.J.K. Kumar, learned counsel for the petitioner and Mr. Shaik Jeelani Basha, learned Special Standing Counsel for the respondents.

3. The grievance of the petitioner is two-fold. First is that the petitioner opted to pay tax under Section 4(7)(d) of the A.P. VAT Act, 2005 and that they have filed Form VAT 250 prior to State bifurcation. Therefore, the total revenue from operations to be taken into account by the respondents, is fixed as per the law laid down by this Court in *Omega Shelters Pvt. Ltd. v. Assistant Commissioner of Commercial Taxes*[1].

4. The 2nd grievance of the petitioner is that though they appeared for personal hearing and pointed out that they had filed their objections, the 1st respondent proceeded on the basis that no objections were filed. The relevant portion of the impugned order reads as follows:

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[1] 61 APSTJ 1

> "Accordingly, a show cause notice issued in Form VAT 305A dated: 25.06.2016 inviting their objections if any within 7 days of the receipt of the notice. Having received the notice on 28.06.2016, even after expiry of 16 days since they have not filed the reply. In the interest of natural justice a notice issued on 14.07.2016 requested to appear for personal hearing on 21.07.2016 along with their objection if any. As on date they have not filed any objections, hence, it is construed that they have not any objections on the proposed turnover & taxes and the proposed under declaration of tax is hereby confirmed."

5. According to the petitioner, they are not even able to produce a copy of the objections, since the Income Tax Department has taken away all the records during a raid.

6. In the light of the positive stand taken by the petitioner that even the copy of the objections filed by them has been taken away by the Income Tax Department and in the light of the stand taken by the respondents that the petitioner did not file a reply, it would be better to direct the petitioner to file a reply and take all objections, so that the same could be considered and an order passed afresh.

7. In view of the above, the writ petitions are allowed and the impugned orders are set aside. The petitioner shall file their objections, on or before 27-3-2017. Thereafter, the respondents shall give an opportunity of personal hearing and upon consideration of the objections and the documents, pass final orders in accordance with law. As a consequence, the garnishee order is also set aside and the respondents shall

issue way bills online. The miscellaneous petitions, if any, pending in these writ petitions shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

13th March, 2017.
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