

* IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
* HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

+ W.P.NOs.31825 & 31861 of 2017

% Date: 25-10-2017

W.P.No.31825/ 2017

Between:

M/s. Sri Sai Ganesh Production Pvt. Ltd.,
Rep. by its Managing Director,
Bellamkonda Surendra Choudary,
R/o. Ashwini Layout, Plot No.4/P,
Jubilee Hills, Near Andhra Jyothi Journalist Colony,
Hyderabad – 500 033.

.... Petitioner

And

The Commissioner,
O/o the Commissioner of Central Excise & Service Tax,
Hyderabad – III, Commissionerate,
L.B. Stadium, Basheerbagh,
Hyderabad – 500 008

... Respondent

W.P.No.31861/ 2017

Between:

M/s. Sri Sai Ganesh Production Pvt. Ltd.,
Ashwini Layout, Plot No.4/P,
Jubilee Hills, Near Andhra Jyothi Journalist Colony,
Hyderabad – 500 033, rep. by its Proprietor,
Bellamkonda Surendra Choudary,

.... Petitioner

And

The Joint Commissioner,
O/o the Commissioner of Service Tax,
Sitarama Towers, Red Hills
Hyderabad – 500 004

... Respondent

! Counsel for the Petitioner
(in both W.Ps)

: Mr. Gandra Mohan Rao

^ Counsel for Respondent
(in both W.Ps)

: Mr. B. Narasimha Sarma

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> HEAD NOTE:

? Cases referred

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION Nos.31825 & 31861 of 2017

COMMON ORDER: (Per VRS,J)

The petitioners, one of which is a private limited company and the other a partnership firm, managed by the same set of individuals, have come up with the above writ petitions challenging the Orders in Original passed by the adjudicating authorities under the Finance Act, 1994, demanding service tax on the copy right services allegedly rendered by the petitioners during the period from July, 2010 to July 2012 and also levying penalties under various provisions of the Finance Act, 1994.

2. Heard Mr. Gandra Mohan Rao, learned counsel for the petitioners and Mr. B. Narasimha Sarma, learned Senior Standing Counsel for the respondents.

3. The short ground on which the impugned orders are challenged by the petitioners by way of the above writ petitions is that they were not served with any notice of personal hearing and that in the case of the second petitioner they were not even served with the show cause notice.

4. On instructions, it is submitted by Mr. B. Narasimha Sarma, learned Senior Standing Counsel for the department that show cause notices as well as notices for personal hearing were actually sent by speed post to the address available in the official records and that there is also no dispute about the addresses to which the notices were so sent. Therefore, the learned Senior Standing Counsel contended that the department was not at fault.

5. However, it is seen from the papers that the Kotak Mahindra Bank, from which the petitioners had availed the financial facilities,

classified the accounts of the petitioners as Non-Performing Assets and took over possession of the building to which the notices were actually sent by the respondents. This was done by the bank in exercise of the power conferred by Section 30(4) of the SARFAESI Act, 2004.

6. Once the bank had taken possession of the property, to which the notices were addressed, the allegation of the petitioners that they were not served with notices, cannot be rejected as false. It may be true that the respondents were not at fault. But it is equally true that the petitioners were also not at fault, since the building in which their offices were located, had been taken possession of by the bank, by the time the notices were sent.

7. In view of the above, we are of the considered opinion that the petitioners did not have sufficient opportunity to defend themselves against the proposals and that there was violation of principles of natural justice. Therefore, the impugned orders deserve to be set aside and the petitioners are entitled to grant one more opportunity.

8. Insofar as the first case is concerned, the petitioner has received the show cause notice but has not submitted the reply. Insofar as the second case is concerned, the learned Senior Standing Counsel for the respondent has now served a copy of the show cause notice on the counsel for the petitioner.

9. Therefore, both the writ petitions are disposed of to the following effect:

- a) The impugned orders are set aside and the matters are remanded back to the adjudicating authorities.
- b) On or before 20.11.2017, the petitioners shall submit their responses to the show cause notices, to the adjudicating officers.

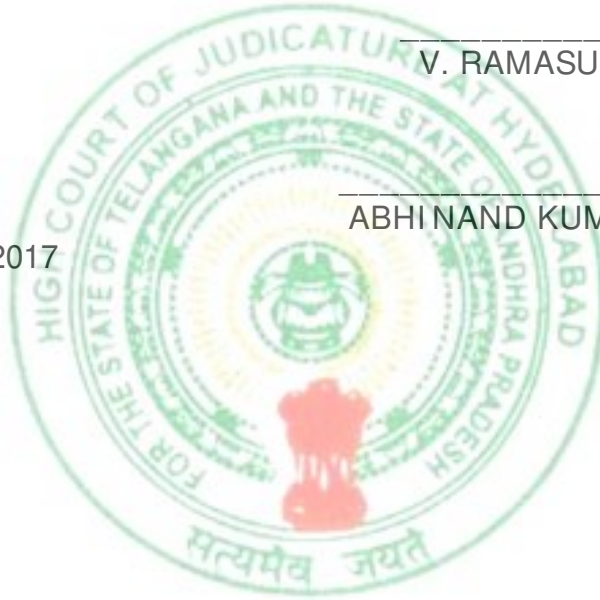
- c) The adjudicating officers shall then fix a date for personal hearing and communicate the same to the addresses indicated in the reply to the show cause notices.
- d) On the date so fixed for personal hearing, the petitioners or their representatives shall appear before the adjudicating officers. The adjudicating officers may then pass orders in accordance with law.

10. As a sequel, miscellaneous petitions pending in this writ petition, if any, shall stand closed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J.

ABHINAND KUMAR SHAVILI, J.

25th October, 2017
Js.



HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION Nos.31825 & 31861 of 2017

(Order of the Bench delivered by VRSJ)



Js.

25th October, 2017