

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE MS. JUSTICE J. UMA DEVI

WRIT PETITION No. 41549 of 2016

ORDER: (*Per VRS,J*)

Aggrieved by an order in original passed by the Commissioner of Central Excise and Service Tax, the assessee has come up with the present writ petition, complaining of violation of the principles of natural justice.

2. Heard Ms. L. Maithili, learned counsel, representing Mr. A. Laxminarayana, learned counsel for the petitioner, and Mr. M.V.J.K. Kumar, learned senior standing counsel for Central Excise, Customs and Service Tax, appearing for the respondent.

3. The main grievance of the petitioner is that on the date fixed for hearing, namely, 09.02.2016, their counsel traveled from Chennai to Hyderabad, *en route* to Vijayawada. But, on 08.02.2016, they were informed that the hearing scheduled for 09.02.2016 stood cancelled. Therefore, their counsel had to go back.

4. Subsequently, a notice, dated 17.02.2016, posting the personal hearing to 24.02.2016 was served on the petitioner on 22.02.2016. Since hardly a period of about 48 hours was left, they could not make

an arrangement for the travel of their counsel from Chennai to Guntur. Therefore, a letter, dated 23.02.2016, was sent seeking adjournment. Thereafter, no notice of hearing was issued and an *ex parte* order came to be passed on 29.08.2016. Therefore, the petitioner is aggrieved that there was violation of the principles of natural justice.

5. In Paragraph-19 of the impugned order, the Adjudicating Authority has stated that the petitioner failed to avail any of the opportunities of hearing given to them on 19.01.2016, 09.02.2016, and 24.02.2016. But, the fact that the hearing fixed for 09.02.2016 stood cancelled, is admitted by the respondent in their counter. Therefore, it is a case where the petitioner deserves an opportunity of hearing.

6. Hence, the Writ Petition is allowed, the impugned order is set aside, and the matter remitted back to the Adjudicating Authority. The Adjudicating Authority shall fix a date of hearing and inform to the petitioner at least one week in advance of the intended date of hearing. On the said date, the petitioner should appear without fail and make all submissions with documentary evidence. Thereafter, the Adjudicating Authority shall consider the submissions, with reference to the documents, and pass a fresh order.

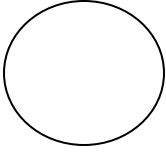
Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J.

25th January, 2017
cbs





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Writ Petition No. 41549 of 2016
(allowed)

25th January, 2017

cbs