* 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
HON'BLE SMT JUSTICE T. RAJANI

+WRIT PETITION No.26659 of 2017

% Date: 06-09-2017

#Between:

M/s. Sai Roopa Projects,
Managing Partner, Gopu, Ailaiah Yadav,
S/o. G. Komaraiah, H.No.B-78, Gowthami Nagar (FCI),
Ramgundam, Karimnagar District.

…Petitioner

And

1. The State of Telangana rep. by its Principal Secretary, Revenue Department (CT), Secretariat, Hyderabad.
2. The Commercial Tax Officer, Peddapalli, Karimnagar District.
3. M/s. Kesoram Cements, Basanthnagar, rep. by its President, Karimnagar District – 505187.

…Respondents

! Counsel for the Petitioner : Mr. K. Durga Prasad

^ Counsel for Respondents : Mr. T. Vinod Kumar Spl. S.C.

< GIST:
> HEAD NOTE:
? Cases referred

HONOURABLE MR. JUSTICE V.RAMASUBRAMANIAN
And
HON'BLE SMT JUSTICE T. RAJANI

WRIT PETITION No.26659 of 2017

ORDER: (Per VRS,J)

The petitioner has come up with the above writ petition challenging an order of assessment passed under Telangana VAT Act, 2005.

2. Heard Mr. K. Durga Prasad, learned counsel for the petitioner and Mr. T. Vinod Kumar, learned Special Standing Counsel for the respondents.

3. The main grievance of the petitioner is that they were not given adequate opportunity in the course of hearing, to prove that they did not receive hire charges. The contention of the petitioner is that they collected only loading and transporting charges and that the assessing officer passed the impugned order, without sufficient opportunity.

4. Insofar as the question of opportunity is concerned, it will be useful to extract the relevant portion of the impugned order, as follows:

> "Accordingly issued show cause notice in Form VAT 305-A dated 08.05.2017 was issued to file their written statement of objections if any, within 7 days of date of this notice failing which orders will be passed without any further notice in this matter.
>
> With the reply to the show cause notice, the dealer was requested for adjourn/grant time for a period of 30 days, but till to the date i.e., up to 19.06.2017, even after availing reasonable and sufficient opportunity, the dealer has failed to file their objections so far. Hence it is construed that the dealer has no valid objections for the proposed assessment."

5. It is true that the petitioner failed to avail the opportunities given to them to file a reply. But nevertheless, the respondent also did not afford an opportunity of personal hearing to the petitioner.

6. Therefore to check the bona fides of the petitioner we passed an interim order on 17.08.2017 directing the petitioner to deposit a sum of

Rs.10,00,000/-. Today the petitioner has filed a Memo enclosing the proof of payment of Rs.10,00,000/-.

7. The fact remains that the petitioner sought personal hearing, but the same was not granted. The question as to whether the petitioner collected only loading and transporting charges or hire charges, is a question that can be gone into on the basis of evidence. Therefore, the writ petition is allowed. The impugned order is set aside and the matter is remitted back to the assessing officer for fresh consideration. The petitioner shall submit their objections to the show cause notice, on or before 18.9.2017. Thereafter, the assessing officer shall fix a date for personal hearing and intimate the same in advance to the petitioner, at least seven days before the date of personal hearing. On the date fixed for personal hearing the petitioner shall appear without fail and file all the evidence in their possession. Thereafter, the assessing officer may pass orders in accordance with law.

8. The question as to what should be done with the amount of Rs.10,00,000/- deposited by the petitioner pursuant to our interim order, will depend upon the outcome of the assessment proceedings. If the order of assessment is in favour of the petitioner, the amount deposited by the petitioner pursuant to our interim order shall be refunded subject to appropriation of any dues. If the de nova assessment results in any liability over and above the amount deposited by the petitioner, the petitioner shall be liable to pay the dues, in excess of the amount deposited, subject however to the right of appeal.

9. 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.

____
T. RAJANI, J.

6th September, 2017.
Js.

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SMT JUSTICE T. RAJANI

W.P.No.26659 of 2017

(Per VRS,J)

6th September, 2017

Js.