THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE MS. JUSTICE J. UMA DEVI

WRIT PETITION No. 33692 of 2016

ORDER: ***(Per VRS,J)***

Aggrieved by an order of assessment passed under the A.P. Value Added Tax Act, 2005, the dealer has come up with the present writ petition.

2. Heard Mr. O. Manoher Reddy, learned counsel for the petitioner. Mr. S. Suribabu, learned special standing counsel for Commercial Taxes (AP), takes notice for the respondents.

3. The short ground, on which the impugned order of assessment is challenged, is that it has been passed in violation of the principles of natural justice. It is precisely for the same reason that the petitioner seeks to bypass the alternative remedy of a statutory appeal.

4. It appears from the narration of facts found in the impugned order of assessment that the Assessing Officer issued a show-cause-notice, dated 29.04.2016. Since there was no response, he issued another show-cause-notice, dated 13.05.2016.

5. The dealer submitted a reply on 20.05.2016 seeking time. Time was granted till 09.06.2016. But, he gave a representation, dated

08.06.2016, for further time. Further time was granted up to 24.06.2016. But, on 24.06.2016, he again sought time. He was granted time up to 15.07.2016. Thereafter, he filed his statement of objections on 01.08.2016 and 16.08.2016. After considering the objections, the impugned order was passed. However, no opportunity of personal hearing was granted. Therefore, the ground, on which the dealer has come up with the present writ petition, is that the failure of the Assessing Officer to grant an opportunity of personal hearing is violative of the principles of natural justice.

6. As seen from the last paragraph of the statement of objections, dated 16.08.2016, the dealer has, in fact, sought an opportunity of personal hearing. That he is entitled to the opportunity of personal hearing, is beyond any pale of doubt. As a matter of fact, the impugned order itself discloses that as per the Circular of the Commissioner of Commercial Taxes (AP) in Ref.No.L-V(2)/144/2010, dated 04.05.2010, a dealer should be given an opportunity to appear for personal hearing. Therefore, on this short ground, the impugned order is liable to be set aside and the matter remitted back.

7. However, in view of the past conduct of the dealer, we deem it necessary to fix a date for the appearance of the dealer, so that what

happened in the case of filing of objections, is not repeated by the dealer.

8. Therefore, the Writ Petition is allowed, the impugned order is set aside, and the matter remitted back to the Assessing Officer. The dealer shall appear with all relevant records, documents, books of accounts, and necessary evidences before the Assessing Officer on 06.02.2017 at 10.30 a.m. In case the Assessing Officer could not take up the proceedings for personal hearing due to any unavoidable reasons, he may issue proceedings on 06.02.2017 after getting an endorsement from the dealer, of a firm date of hearing, on which the dealer should personally appear. On the said date, the Assessing Officer shall hear the dealer, consider his objections with reference to the evidence on record, and pass a detailed order independently of the opinions that he had earlier formed. If the dealer fails to avail the opportunity, he will be deemed to have forfeited the opportunity.

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.

18th January, 2017
cbs

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN √

AND

THE HON'BLE MS. JUSTICE J. UMA DEVI

Writ Petition No. 33692 of 2016
(allowed)

18th January, 2017

cbs