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

WRIT PETITION No. 37326 of 2016

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

The petitioner has come up with the above writ petition, challenging an order of assessment and the consequential notice for penalty.

2. Heard Mr. T. Srinivasa Murthy, learned counsel for the petitioner, and Mr. T. Vinod Kumar, learned special standing counsel for Commercial Taxes (Telangana), appearing for the respondents.

3. The petitioner challenges the impugned order of assessment, primarily on the ground of violation of the principles of natural justice. But, a close look at the impugned order would show that the Assessing Officer cannot be held completely guilty of passing the order in violation of the principles of natural justice. It appears that the opportunities given to the petitioner were not made proper use of by them. This can be seen from one portion of the impugned assessment order, which reads as follows:

> *"Accordingly, a show cause notice in form VAT 305A, dt:31-05-2016 was issued calling for their objections in writing on the proposed tax of Rs.8,78,771-00. Having received the show cause notice, they have not filed any reply. In the circumstances, they have been provided an opportunity of being heard personally vide this office notice dated:04-07-2016. In response to the personal hearing notice, the dealers have filed a letter dated:16-07-2016 and sought (30) days time to file their reply. However, the time*

sought for (30) days has been restricted to (10) days and they have been requested to file their objections by 25-07-2016. Since the dealers failed to file their objections in writing even on 25-07-2016, another notice of personal hearing notice dated:26-07-2016 was issued to the dealers requesting to appear on 04-08-2016 to defend their case personally. Having received the notice, the dealers have filed a letter dated:04-08-2016 and requested further time of (20) days to file their reply in the matter on the pretext that, their tax consultant was pre-occupied in preparation of IT returns. Conceding their request, they have been allowed (20) days time. But, even after expiry of time granted, the dealers neither filed objections in writing nor attended the personal hearing.

Hence, it is construed that, they have no objections on the proposed tax as in the show cause notice dated:31-05-2016 and the under declared tax is hereby confirmed."

4. But nevertheless, the petitioner pleaded that they were prevented by circumstances beyond their control. They have stated that they had only a part-time Accountant, who was working on details, and wanted more time. To the last letter seeking a time of 20 days, there was no response, but in the meantime, the assessment was completed.

5. In such circumstances, we are of the view that one opportunity could be given to the petitioner, subject, however, to payment of costs. Therefore, the Writ Petition is allowed, the impugned order of assessment, dated 27.08.2016, is set aside, subject to the condition that the petitioner pays costs of Rs.10,000/- (Rupees ten thousand only) to the respondents, within a period of one week. Thereafter, the petitioner shall appear before the Assessing Officer on 27.02.2017 at 11.00 a.m. If the date is not convenient to the Assessing Officer, he

shall inform the actual date of hearing, well in advance, to the petitioner. On the said date, the petitioner shall positively appear and make their submissions. Thereafter, it will be open to the Assessing Officer to pass an order afresh. If the petitioner fails to avail this opportunity, it will be open to the Assessing Officer to pass an order, in accordance with law.

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.

10th February, 2017
cbs

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN √

AND

THE HON'BLE MS. JUSTICE J. UMA DEVI

Writ Petition No. 37326 of 2016
(allowed)

10th February, 2017

cbs