* 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 SRI JUSTICE G. SHYAM PRASAD

+ W.P.No.8650 of 2018

%Date: 18-04-2018

#Between:

M/s. Sri Sadguru Sai Constructions,
D.No.6/57, First Floor, Main Road,
Nunna, Vijayawada Rural – 521 212
Rep. by its Proprietrix Smt. Avuthu Sailaja

…Petitioner

Vs.

1. The State of Andhra Pradesh, rep. by its Principal Secretary, Revenue (CT-II) Department, A.P. Secretariat, Velagapudi, Amaravathi, Guntur District, A.P.
2. The Commercial Tax Officer, Nandigama Circle, Bhavanipuram, Vijayawada.

…Respondents

! Counsel for the Petitioner : Mr. K. Raji Reddy

^ Counsel for Respondents 1 & 2 : Mr. Shaik Jeelani Basha

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? Cases referred

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G. SHYAM PRASAD

W.P.No.8650 of 2018

ORDER: (per VRS,J)

After having failed to avail the opportunity given to them to respond to the show cause notice, the dealer has come up with the above writ petition challenging an order of assessment passed under the A.P. VAT Act, 2005.

2. Heard Mr. K. Raji Reddy, learned counsel for the petitioner and Mr. Shaik Jeelani Basha, learned Special Standing Counsel for the respondents.

3. A person, who fails to avail the opportunity to respond to the show cause notice, cannot make a complaint of the violation of the natural justice. Therefore, the objections based upon the violation of natural justice are liable to be rejected outright.

4. But the learned counsel for the petitioner submitted that at the time of audit, the petitioner produced certain materials and that at least those material ought to have been taken into account before the impugned order was passed. If the dealer has actually produced any material at the time of audit, the same deserves to be taken into account, even if the dealer fails to respond to the show cause notice.

5. The petitioner has produced the copy of unaudited letter containing details of Form-501B and Form-VAT 250 allegedly submitted at the time of audit. This letter contains the rubber stamp of the office of the Assessing Officer.

6. But, Mr. Shaik Jeelani Basha, learned Special Standing Counsel submitted that these Forms were not available in the assessment file.

7. Since there is prima facie evidence to show that Form-501B and Form-VAT 250 were furnished at the time of audit, we are of the view that the failure of the Assessing Officer to take into account the same before arriving at the taxable turnover and the tax payable on the basis of best of judgment, may not be right. Hence we are of the view that one opportunity should be given to the petitioner.

8. Therefore, the writ petition is allowed setting aside the impugned order. The petitioner shall file a reply to the show cause notice and to the reasons contained in the impugned order on or before 07.05.2018, along with another set of Forms that he claims to have produced at the time of audit. Thereafter, the 2nd respondent shall fix a date of hearing before 31.05.2018 and inform the petitioner in advance. On the date of personal hearing, it is up to the petitioner to participate. Thereafter the 2nd respondent may pass orders afresh. There shall be no order as to costs.

9. As a sequel, miscellaneous petitions pending in this writ petition, if any, shall stand closed.

V. RAMASUBRAMANIAN, J.

G. SHYAM PRASAD, J.

18th April, 2018
Js.

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G. SHYAM PRASAD

W.P.No.8650 of 2018
(Per VRSJ)

18th April, 2018

Js.