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

Writ Petition No.12046 of 2018

Order: (per V.Ramasubramanian, J.)

Challenging an order of assessment passed under the Central Sales Tax Act, 1956, the dealer has come up with the above writ petition.

2. Heard Mr. S.R.R. Viswanath, learned counsel for the petitioner and Mr. S.Suri Babu, learned Special Standing Counsel for the respondents 1 to 3.

3. The main grievance of the petitioner is that they are 100% exporters and that the very same Assessing Officer has accepted this in respect of several assessment years under the Central Sales Tax Act, 1956 and that therefore he cannot take a different stand.

4. But the fact remains that the petitioner did not respond to the show cause notices. It appears that even the impugned order could not be served on him.

5. The petitioner seeks to explain the delay in coming to Court on the following lines:

> "9. The petitioner sustained losses and hence could not do any business at Guntur after the 1st quarter of the Financial Year 2012-13. The petitioner's branch at Guntur did not do any business in the Financial Year 2013-14 to 2017-18. Since the petitioner wants to revive its export business at Guntur it did not report stoppage of business or seek cancellation of registration. It has been submitting the nil returns. Due to losses sustained by the petitioner

> many employees working in Guntur branch left the company.
>
> 10. The petitioner was not aware of any pre-assessment show cause notice issued by the 1st respondent. The petitioner was also not aware of any assessment order passed by the 1st respondent for the year 2011-12. Further, the petitioner's branch remained closed at times in the absence of regular employees who had left the employment."

6. It appears that it is only after the petitioner attempted to revive the company that the impugned order was served. In such circumstances, we think that the delay and laches are properly explained.

7. On instructions, it was stated by the learned Special Standing Counsel that the very same Assessing Officer has passed orders in the case of the very same assessee in relation to the previous years under the Central Sales Tax Act, 1956, confirming that he is a 100% exporter. Therefore, it was within the knowledge of the Assessing Officer to take note of the previous assessment orders before coming to the conclusion that he did in the impugned order, despite the failure of the petitioner to file objections.

8. In cases where the objections are not filed to the show cause notices and the assessees do not participate in the assessment proceedings, the Assessing Officer should normally look into the material available on record. Therefore, we are of the considered view that the petitioner may be given one opportunity.

9. Hence, the writ petition is allowed, the impugned order is set aside and the matter remanded back to the 1st respondent. The petitioner shall file a reply at least now within a period of 15 (fifteen) days from the date of receipt of a copy of this order along with the necessary documents. Thereafter, the 1st respondent shall give an opportunity of personal hearing and then pass orders afresh. The interlocutory applications, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

30th April, 2018.
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

Writ Petition No.12046 of 2018
[per VRS, J.]

30th April, 2018.
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