***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 MS. JUSTICE J. UMA DEVI**

+W.P.No.15348 and 15352 of 2018

Date: 30-04-2018

#**Between**:

… Petitioner

And

… Respondents

! Counsel for the Petitioner : Mr. R. Raghunandan, Senior Counsel

^ Counsel for Respondents : Mr. S. Suribabu, & Sk. Jeelani Basha, spl. Standing counsel

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? Cases referred

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HON'BLE MS. JUSTICE J. UMA DEVI

W.P.Nos.15348 and 15352 of 2018

COMMON ORDER: *(per V. Ramasubramanian,J)*

Challenging Orders of Assessment followed by show cause notices for penalty, two different entities, both of whom form part of the same group of concerns, who are dealers under the A.P. VAT Act, 2005, have come up with the above writ petitions.

2. Heard Mr. R. Raghunandan, learned senior counsel for the petitioners and Mr. S. Suribabu, and Mr. Shaik Jeelani Basha, learned special standing counsel for the respondents.

3. While the petitioner in the first writ petition is a proprietary concern, engaged in the manufacture and sale of sweets and bakery items, the petitioner in the second writ petition is a Private Limited company engaged in the manufacture of milk and milk products. The petitioners in both these cases are registered as dealers in the States of Andhra Pradesh, Tamil Nadu and Karnataka both under the local VAT Acts and under the CST Act.

4. Though the petitioners have an effective alternative remedy of a statutory appeal as against the impugned orders, the petitioners have chosen to invoke the jurisdiction of this Court under Article 226 of the Constitution of India, on the ground of gross violation of the principles of natural justice and also on the ground of errors

apparent on the face of the record. Therefore, we shall confine our discussion only to these two aspects.

5. It appears from the impugned orders of assessment passed in both the cases that on the basis of incriminating material gathered about the dealers, an authorization for the conduct of VAT audit was issued. An audit was conducted and completed for the period from 01-02-2014 to 31-03-2015 in respect of the petitioner in the first writ petition. Similarly, the audit was conducted and completed for the period from 01-12-2013 to 29-03-2015 in respect of the other petititoner. After the dealers filed copies of VAT 305 orders, the present audit was conducted for the period from 01-04-2015 to 30-06-2017 in respect of the first petitioner and for the period from 01-03-2015 to 30-06-2017 in respect of the other petitioner.

6. After recording the statement of the proprietor of the first petitioner and the Managing Director of the second petitioner in the course of audit and after gathering materials and verifying the same with reference to VAT 200 returns, books of accounts etc., certain discrepancies were allegedly noticed. On the basis of the discrepancies noted, the competent authority arrived at suppressed turnovers for the relevant period.

7. Thereafter, show cause notices in VAT 305A forms dated 14-03-2018 were issued to the petitioners. In response, the dealers requested for copies of the incriminating material. In the first writ petition, the impugned order itself discloses that the incriminating material contained about 751 pages. In the order impugned in the

second writ petition, the volume of the incriminating material is not indicated. According to the petitioner, these materials ran to nearly 2000 pages.

8. Even as per the impugned orders in both the writ petitions, the incriminating materials were supplied on 21-03-2018 and the petitioners were requested to file objections on or before 24-03-2018. Since the time granted was too short, the dealers requested further time up to 28-03-2018 in both the cases for filing objections. The Assessing Officer granted time up to 28-03-2018.

9. It is stated in the impugned orders that on 27-03-2018, the dealers appeared and filed letters claiming that the purchases and sales turn over reported to the Income Tax Department were based upon the audited books of accounts maintained in Tally Software and that in the course of audit, the auditors pointed out more discrepancies, which had happened due to inexperience staff. The dealers further claimed that the books of accounts are now maintained in the regular course of business and that no serious discrepancies were noticed. After scrutinizing the reply filed on 27-03-2018, the Assessing Officer passed the impugned orders confirming the proposals made in the show cause notices dated 13-03-2018 made in VAT 305-A.

10. Therefore, on the face of it, it appears as though the Assessing Officer had followed the procedure prescribed by law and passed the orders after granting an opportunity of hearing. But what is camaflauged in the impugned orders is a final endorsement dated

27-03-2018 issued to the petitioner in the first writ petition and a final endorsement dated 24-03-2018 issued to the petitioner in the second writ petition. In the final endorsement dated 27-03-2018 issued to the petitioner in the first writ petition, the Assessing Officer directed the petitioner to appear for a personal hearing on 31-03-2018 at 11.00 A.M.

11. But it is obvious from the impugned orders that without granting an opportunity of personal hearing, the impugned orders were passed, merely on the basis of the reply given on 27-03-2018. What is shocking is the fact that though there is a reference to the final endorsement dated 27-03-2018 in both the cases, the final endorsement in one case was dated 24-03-2018. Therefore, it is clear that there has been some slip. The failure of the Assessing Officer to grant personal hearing, especially in a matter and magnitude of this nature, tantamounts to a gross violation of the principles of natural justice.

12. As rightly pointed out by the learned senior counsel for the petitioners, the supply of the copies of the incriminating material running to 751 pages in one case and running to 2000 pages in another case with a direction to come up with a reply within 48 hours, has turned the opportunity to show cause as an empty formality. Therefore, there is gross violation of the principles of natural justice in both cases. Probably, the Assessing Officer was trying to complete the exercise keeping the financial year ending as a milestone. But the financial year coming to a close on 31-03-2018

can hardly be a ground to turn the opportunity of hearing into a dead letter.

13. There is also one more discrepancy in the orders impugned in these writ petitions. The 2nd respondent in these writ petitions is the Assessing Officer. He is one and the same person in both the cases. But it is seen from the tabulation given in the impugned orders that in one case he has arrived at the suppressed taxable sales turn over by taking the actual turn over arrived at by the Vigilance and Enforcement Department and in the other case he had taken the turn over as per the income tax returns. The basis for arriving at the suppressed turn over cannot be different for two different dealers forming part of the same group. It is not possible for an Assessing Officer to take the sales turn over reflected in the income tax returns or the sales turn over arrived at by the Vigilance Department, whichever is higher. Therefore, he impugned orders suffer from a patent illegality also.

14. In view of the above, the writ petitions are allowed, the impugned orders are set aside and the matter remanded back to the 2nd respondent for a fresh consideration. The dealers are granted time up to 31-05-2018 to peruse the copies of the incriminating material supplied to them and file their objections. Thereafter, the 2nd respondent shall fix a date for personal hearing and inform the same in advance to the petitioner. On the date fixed for personal hearing, the petitioners or their authorized representatives shall appear and

make their submissions. Thereafter, the 2nd respondent may pass orders in accordance with law.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

Date: 30-04-2018

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