THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION NO.7656 OF 2017

ORDER: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

The dispute in this Writ Petition is whether the subject goods were sold in the month of May or in the month of June, 2016.

While the assessee's claim is that the purchases made by him in the months of March to May, 2016 were sold in the month of June, 2016, the case of the revenue, on the other hand, is that these goods were sold in its entirety in the month of May, 2016 despite which neither has the petitioner filed its monthly returns for the month of June, 2016 nor has tax been paid. It is only after a show cause notice was issued to the petitioner in June, 2016, did the assessee filed his returns in June, 2016 declaring that these goods were sold only in June, 2016. According to the respondents, the petitioner has taken this stand only with a view to avoid payment of penalty for non-filing of monthly returns in June, 2016, and consequent non-payment of tax.

It is wholly unnecessary for us to examine the rival contentions since the petitioner, in reply to the notice dated 16.01.2017, had, by their letter dated 25.01.2017, sought for a copy of the assessment order to be furnished to them. Despite receipt of the petitioner's letter dated 25.01.2017 on 28.01.2017, the assessing authority failed to furnish a copy of the assessment order to the petitioner. Since the assessment order is dated 01.12.2016, if a copy thereof had been furnished to the petitioner immediately after receipt of their letter dated 25.01.2017, they could have availed their remedy of an appeal within time.

It is not in dispute that the assessment order was passed without the petitioner availing the opportunity of being heard. Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, would fairly state that the petitioner's letter dated 25.01.2017 was received by the department on 28.01.2017. We consider it appropriate, in these circumstances, to afford the petitioner an opportunity of being heard. The impugned assessment order is set aside, permitting the respondent-assessing authority to issue a fresh show cause notice, and thereafter to assess the petitioner to tax, for the period - March to June, 2016 in accordance with law.

Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, would express apprehension of the petitioner avoiding service of notice; and, thereby, avoid being subjected to assessment. Sri G.Narendra Chetty, learned counsel for the petitioner, undertakes to furnish a copy of the address to which the notice may be sent, to the petitioner by the assessing authority, within one week from today.

On such address being furnished, the assessing authority shall issue a fresh show cause notice and serve it on the petitioner within two (2) weeks thereafter. The petitioner may file his reply to the show cause notice within two (2) weeks of receipt of the show cause notice. The assessing authority shall, after affording the petitioner an opportunity of personal hearing, pass a fresh assessment order within one (1) month thereafter. The entire exercise, culminating in a fresh assessment order being passed, shall be completed within two (2) months from the date of receipt of a copy of this order. Needless to state that, in case the petitioner does not furnish his address within the aforesaid stipulated period of one week, the impugned assessment order shall revive; and it will then be open to the respondents to proceed and take action in accordance with law. Likewise, in case the petitioner does not file his reply to the show cause notice, or to avail the opportunity of a personal hearing, it is open to the assessing authority to proceed and pass a fresh assessment order in accordance with law.

The Writ Petition is disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

4th October 2018
RRB