***IN THE HIGH COURT OF JUDICATURE AT HYDERABAD**
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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

<u>+ WRIT PETITION No.40678 OF 2018</u>

% Date:04.12.2018

Between:

\# M/s. K.P. Ranga Reddy, Peddavadugu,
Anantapuramu District, A.P., rep. by its
Proprietor.

… Petitioner

v.

$ The Commercial Tax Officer (INT),
Anantapuramu Division, PAR Heights,
Gooty Road, Anantapuram and others.

.. Respondents

! For Petitioner : Mr. G.Narendra Chetty

^ For Respondents : Mr. S. Suri Babu

< Gist :

> Head Note :

? Cases Referred : Nil

C/15

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE MS.JUSTICE J. UMA DEVI

WRIT PETITION No.40678 OF 2018

ORDER: ***(Per V. Ramasubramanian, J)***

Challenging an order of assessment passed under the APVAT Act, 2005, the dealer has come up with the above writ petition complaining of violation of the principles of natural justice.

2. Heard Mr. G.Narendra Chetty, learned counsel for the petitioner and Mr. S. Suri Babu, learned Special Standing Counsel for the Department.

3. The impugned order contains reference to 7 proceedings/ communications. The show cause notice dated 23.12.2016 is shown at serial No.6 in the reference column. Admittedly, the dealer submitted a reply on 29.12.2016 seeking one month's time to submit a response.

4. Though the petitioner does not appear to have submitted a reply to the show cause notice, he has admittedly filed Form 501 certificates through the authorized representative. The impugned order itself makes a mention about 14 certificates furnished by the Dealer through their authorized representative. But, thereafter, no notice of hearing was actually sent. But, an order of assessment was passed. Therefore, there appears to be a clear violation of the principles of natural justice.

5. But, it is contended by Mr. S. Suri Babu, learned Special Standing Counsel that the impugned order is dated 28.02.2017 and

that the same has been challenged now with an excuse that the order copy was not received. The learned Special Standing produced the file which contains the acknowledgment card for having served the impugned assessment order in the month of March 2017. Therefore, the learned Special Standing Counsel contended that the petitioner, who did not seek an opportunity of hearing and who kept quite after receipt of the impugned order for more than 20 months, cannot raise a hue and cry.

6. We have carefully considered the above submissions.

7. Insofar as the delay on the part of the petitioner in coming to Court is concerned, it is seen that the postal acknowledgment card contains a signature of someone in Telugu. The initial of the person is given in English Alphabet as 'A'. The name of the person who signed in the acknowledgment card appears to be 'A. Anjaneyulu'.

8. The stand taken by the petitioner in the affidavit in support of the writ petition is that he and his entire family had gone to his native place, at that time on account of his father's illness. His father is stated to have suffered a paralytic attack at the relevant point of time. Therefore, the petitioner feigns ignorance of the person, who received the copy of the order of assessment.

9. In the light of the fact that the postal acknowledgment card contains the signature of someone else and in the light of the averments made in the affidavit, the objection to the belated filing of the writ petition, need not be put against the petitioner.

10. Once the second aspect of the matter is cleared, it can be seen from the order of assessment that no independent opportunity of personal hearing was granted. As a matter of fact, it is not as though the petitioner was completely evasive. In response to the show cause notice dated 23.12.2016, the petitioner filed a reply on 29.12.2016 itself seeking more time. Thereafter, the petitioner also produced Form 501 certificates through his authorized representative. The impugned order is also not addressed to the authorized representative. There was no communication after filing of the 501 certificates either to the petitioner or to his authorized representative.

11. Therefore, the petitioner deserves one opportunity.

12. Hence, the writ petition is allowed, the impugned order is set aside and the matter remanded back to the respondents. The petitioner shall file his objections to the show cause notice on or before 24.12.2018. Thereafter, the Assessing Officer shall fix a date for personal hearing and then proceed to pass orders afresh.

As a sequel thereto, miscellaneous petitions, if any pending, shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

December 04, 2018
KTL