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

+ Writ Petition Nos.42913 and 42943 of 2018

% Date: 29-11-2018

\# M/s Sree Constructions, Lake View Residency,
Prasanth Nagar, B.K. Palli, Madanapalle,
Rep. by its Managing Partner S.Rama Krishore
S/o S.Basi Reddy, R/o D.No.5/6/789,
Sripuram Colony, Tirupathy

… Petitioner

Vs.

$ 1. State of Andhra Pradesh,
Rep. by its Prl. Secretary, Revenue (CT) Dept.,
Velagapudi, Amaravathi, Guntur Dist., A.P.

2. The Assistant Commissioner (ST),
Madanapalle, Chittoor Dist., A.P.

… Respondents

! Counsel for Petitioner: Mr. M.V.J.K. Kumar

Counsel for Respondents: Mr. Shaik Jeelani Basha,
Special Standing Counsel

< Gist:

> Head Note:

? Cases referred:
Nil.

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

Writ Petition Nos.42913 and 42943 of 2018

Common Order: (per V.Ramasubramanian, J.)

Challenging the orders of assessment as well as an order of penalty, passed under the Andhra Pradesh Value Added Tax Act, 2005, the dealer has come up with the above writ petitions.

2. Heard Mr. M.V.J.K. Kumar, learned counsel for the petitioner and Mr. Shaik Jeelani Basha, learned Special Standing Counsel for the respondents/Department.

3. It is seen from the impugned orders that the show cause notice relating to tax, issued on 30-10-2017 returned with the endorsement "Insufficient address" made by the Postal authorities. But the Assessing Officer directed the affixture of the notice at the last known place of business, on the ground that the notices relating to the year 2014-15 were served on the assessee at the same address. It is also stated in the impugned order that an opportunity of personal hearing was also provided along with the show cause notice but the same was in vain.

4. In other words, the Assessing Officer has proceeded *ex parte* on the premise that there is an attempt on the part of the assessee to evade service of notice. Though it is not stated expressly as a case of evasion of service of notice, the conclusion drawn by the Assessing Officer points to the same.

5. However, it is stated in the very same impugned order that an errata notice was served on the petitioner. According to the Assessing Officer, the opportunity of personal hearing provided in the errata notice was also not availed of.

6. But it is not known as to how the alternative proceedings were served on the assessee. The first show cause notice returned unserved. The errata notice is stated to have been served. The impugned order was also served at the same address.

7. If evasion of service of notice was the objective of the dealer, it should have been applied to all notices and proceedings. If other proceedings had been served at the same address, there is no reason to conclude that there was an attempt at evasion. Therefore, we are of the considered view that the order of assessment should be set aside and one more opportunity granted. Accordingly, the order of assessment dated 15-3-2018 is set aside, W.P.No.42943 of 2018 is allowed and the matter remanded back. The petitioner shall now submit their objections to the impugned order treating the same as show cause notice. The objections shall be filed on or before 17-12-2018 where the petitioner shall indicate very clearly the address for service of all future notices. Thereafter, the Assessing Officer shall fix a date for personal hearing and hear the petitioner and pass a fresh order of assessment.

8. In view of the order passed in W.P.No.42943 of 2018 setting aside the order of assessment, the order of penalty impugned in the next writ petition should also go. Accordingly, W.P.No.42913 of 2018 is allowed. Pending applications, if any, shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

29th November, 2018.

Note:-
Issue C.C. by tomorrow.
(B/o)
Ak

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

Writ Petition Nos.42913 and 42943 of 2018
(per VRS, J.)

29th November, 2018.
(Ak)