THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

W.P.No.41229 of 2017

Date: 02.01.2018

Between:

Smt.Pavuluri Chaintanya,
W/o. Sri Pavuluri Harish,
Sole proprietrix of M/s.POWEREVER,
26/2/121, Ashoknagar,
4th lane, Ward No.5, Guntur 522 007
Andhra Pradesh .... Petitioner

And

Assistant Commissioner (CT) Audit,
Narasaraopet Division,
11-1-73/1; 3rd and 4th floor,
Vasundhara Complex,
Zinnah Tower Center,
Guntur 522 002 and three others ... Respondents

Counsel for the Petitioner : Dr.S.R.R.Viswanath

Counsel for the Respondents : Mr. Shaik Jeelani Basha
Special Standing Counsel for
Commercial Tax(AP)

The Court made the following:

Order : (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This writ petition is filed to set aside order vide VAT 305/AAO No.86669 dated 31.10.2017 of the respondent No.1.

2. We have heard Dr.S.R.R.Viswanath, learned counsel for the petitioner and Mr.Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes.

3. By the impugned order, respondent No.1 has rejected the input tax credit (ITC) claimed by the petitioner, on the ground that there was no transport of goods between the petitioner and the vendor, who is none other than, the petitioner's husband. It is the case of the petitioner that respondent No.3 is the assessing officer for her vendor and that she has claimed input tax credit only in respect of the tax which was duly assessed by respondent No.3 and paid by her husband in pursuance of the assessment order. It is further her pleaded case that, in spite of the fact that assessment order passed by respondent No.3 and tax receipts in respect of her vendor having been filed before respondent No.1, he has ignored the same and passed the impugned order, rejecting the ITC claim. She further averred that she was pregnant for some time and delivered a baby at the relevant point of time and that, in spite of her personal inconvenience, she attended the office of respondent No.1 on the date fixed for enquiry and that despite the same, the said respondent has not afforded an opportunity of personal hearing, to enable her to

explain her case. Learned Senior Standing Counsel submitted that the petitioner was not physically present on the day fixed for personal hearing.

4. The dispute lies in a narrow sphere, namely, whether the transfer of goods has taken place between the vendor and the petitioner, and if so, the transactions in respect of which the petitioner has claimed ITC, already suffered tax or not, at the hands of her vendor. As the petitioner has pleaded that she had in fact gone to the office of respondent No.1, despite the physical discomfort she was suffering from having delivered a baby a few days prior to the date fixed for hearing, we are of the opinion that it would be in the interests of justice that the petitioner is given another opportunity of personal hearing, to resolve the issue, as to whether the transactions for which she has claimed ITC, are genuine and if so, they suffered tax or not.

5. In this view of the matter, the impugned order is set aside. Respondent No.1 is directed to issue a notice of personal hearing to the petitioner. On the date fixed for personal hearing, the petitioner shall appear by herself of through her agent. After due enquiry, respondent No.1 shall pass a fresh order. If the petitioner feels aggrieved by such order, she is entitled to avail remedies of appeals according to law.

6. With the above directions, the writ petition is allowed to the extent indicated above.

7. As a sequel to disposal of the writ petition, miscellaneous petition is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(M.S.K.Jaiswal, J)

Date: 2nd January, 2018

msb