HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

<u>WRIT PETITION No.2407 OF 2019</u>

<u>ORDER</u>: *(Per Hon'ble Sri Justice V. Ramasubramanian)*

Challenging the order of assessment passed under the Telangana Value Added Tax Act, 2005, on various grounds, such as limitation, lack of opportunity etc., the dealer has come up with the above writ petition.

2. Heard Mr. S.R.R. Viswanath, learned counsel for the petitioner and Mr. M. Govind Reddy, learned Special Standing Counsel for the respondents.

3. According to the learned counsel for the petitioner, part of the assessment was time barred, even before the amendment extending the period of limitation was issued. The next contention is that the nature of the product is decided one way by the Assessing Officer not merely based upon his pleadings but also based upon a Laboratory Test Report, the copy of which was not furnished. It is also claimed that the Vigilance Report was also relied, but only a part of the same was supplied.

4. On the question of non-supply of part of the Vigilance Report and the non-supply of the Laboratory Test Report, there is no quarrel. But, it is contended by Mr. M. Govind Reddy, learned Special Standing Counsel that the non-supply of these copies would not be fatal to the

impugned order, since the petitioner has to fail by his own pleadings. Drawing our attention to the judgment of this Court in **Venkateswara Chemicals v. Government of Andhra Pradesh**[1], it is contended by the learned Special Standing Counsel that what is manufactured by the petitioner is poultry meal, which will not fall under the classification claimed by the petitioner and that therefore the non-supply of the Laboratory Test Report or the Vigilance Report did not had any impact upon the assessment.

5. In other words, the contention of the learned Special Standing Counsel is that this Court has to invoke the empty formality theory. The furnishing of the copy of the report, according to the learned Special Standing Counsel would not have altered the position.

6. But, generally the theory of empty formality is a valid defence to an allegation of violation of principles of natural justice in the Service Jurisprudence. But, insofar as Revenue Laws are concerned, every material on which a decision is taken, may be relevant. Therefore, we are unable to accept the said contention.

7. Insofar as the question of limitation is concerned, the learned Special Standing Counsel invited our attention to the decision of the Constitutional Bench in **S.C. Prashar v. Vasantsen Dwarkadas**[2]. But, we do not wish to get into the same at this stage, as we are of the view

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[1]. 2001 124 STC 515 (AP)
[2]. 1962 STPL 2826 (SC)

that the matter can be remanded back on a short ground, leaving it open to the petitioner to raise even the issue of limitation.

8. Therefore, the present Writ Petition is allowed, the impugned order is set aside and the matter is remanded back to the Assessing Officer. The Assessing Officer shall furnish copies of the full set of the Vigilance Report and the Laboratory Test Report within a week of receipt of a copy of this order. Within two (02) weeks from the date of furnishing of the copies of the reports, the petitioner shall file their additional reply, if any, to the show cause notice. Thereafter, the Assessing Officer shall fix a date for personal hearing and consider all the issues including the issue of limitation and pass final orders in accordance with law. However, there shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the writ petition shall stand closed.

V. RAMASUBRAMANIAN, J

Dr. SHAMEEM AKTHER, J

February 25, 2019
Mgr