HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE P.KESHAVA RAO

Writ Petition No.4115 of 2018

JUDGMENT: *(per V. Ramasubramanian, J)*

Challenging an Order of Assessment passed under the Telangana Value Added Tax Act, 2005, the Dealer has come up with the above Writ Petition.

2. Heard Mr.G.Narendra Chetty, learned Counsel for the petitioner, and Mr.J.Anil Kumar, learned Special Standing Counsel for the respondents.

3. There is no dispute about the fact that the petitioner was served with show-cause notices and the notices of personal hearing. There is also no dispute about the fact that the petitioner failed to respond to these notices. Therefore, the Assessing Officer cannot be blamed for proceeding to pass orders *ex parte*.

4. Nevertheless, the claim of the petitioner is that there was a huge fire accident on 09.10.2017, just two (2) months before the impugned order was passed, though it was four (4) months after the show-cause notice was served. Therefore, it could be argued that the fire accident did not prevent the petitioner from filing a reply to the show-cause notice issued in June, 2017.

5. But the fire accident could possibly be an excuse for not attending the personal hearing. It is seen that at the time of audit, a statement was taken from the petitioner on 22.02.2016. In one portion of the statement recorded by the Audit Officer, it is stated as though the petitioner will produce the purchase and sales invoices within two days. But in another portion of the same

statement, it is recorded that one folder of sales invoices issued by digital factory and another folder of purchase invoices, were enclosed.

6. If the petitioner had enclosed at least some invoices even at the time of audit, their claim to that extent for ITC should have found place in the impugned order. Since there is lack of clarity on this aspect, even from the statement recorded at the time of audit, we are of the view that the petitioner can be given one opportunity.

7. Therefore, the Writ Petition is allowed, the impugned Order is set aside and the matter remanded back to the 3rd respondent. The 3rd respondent shall fix a date for personal hearing on which date, the petitioner shall produce all the invoices and other documents relating to all issues on which they rely upon. Thereafter, the Assessing Officer shall pass Orders afresh in accordance with law.

Consequently, miscellaneous petitions if any pending in the Writ Petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

April 22, 2019
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