THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

and

THE HONOURABLE SRI JUSTICE K. LAKSHMAN

Writ Petition Nos.25382, 25409 and 25436 of 2019

COMMON ORDER : (per Hon'ble M.S. Ramachandra Rao)

Heard the counsel for petitioner in all the Writ Petitions, and Sri J. Anil Kumar, learned Special Government Pleader for Commercial Taxes, appearing for respondents, in all the Writ Petitions.

2. Since common issues arise for consideration in all the Writ Petitions, they are being disposed of by this common order after hearing the counsel for petitioner and Sri J. Anil Kumar, special counsel for Commercial Taxes for the State of Telangana.

3. These three Writ Petitions have been filed by the same petitioner and relate to respective Assessment Orders issued by the 2nd respondent pertaining to assessment years, viz., 2012-13 [Writ Petition No.25382 of 2019], 2013-14 [Writ Petition No.25409 of 2019], and 2014-15 [Writ Petition No.25436 of 2019].

4. The petitioner herein is a company registered under the Companies Act, 1956 having its registered office in Bangalore and having a branch office at Hyderabad.

5. It is engaged in the business of constructing Information Technology Parks and letting out the office space to Software

Companies on monthly rental basis. It is registered under the Telangana VAT Act, 2005 with TIN No.3622 8983 066 and was an assessee on the rolls of the 1st respondent-Commercial Tax Officer, Madhapur Circle.

6. Initially, the petitioner had its place of business located at My Home Nawadweepa Apartments, Vayu Block, Madhapur Village, Ranga Reddy District. It subsequently changed its place of business from the said address to a new address, viz., #8-2-684/3/F/19, Kaushik Society, Road No.12, Banjara Hills, Hyderabad – 500 034.

7. The petitioner intimated the change of address in Form VAT 112 dt.29.05.2014 to the Commercial Tax Officer, Madhapur Circle, who acknowledged the same on 31.05.2014.

8. Thereafter, the petitioner did not hear anything from the 1st respondent.

9. On 05.11.2019, the petitioner received an *e*-mail from the 1st respondent stating that petitioner was an assessee of tax amounting to Rs.7.82 lakhs for the tax period from April, 2008 to March, 2009, and if the said amount is not paid within a period of one (01) day penalty would be levied.

10. The petitioner then filed a letter dt.05.11.2019, which was acknowledged by the 2nd respondent on 06.11.2019, stating that it has no arrears which were payable by it and sought a copy of the proceedings.

11. At the time when the representative of petitioner handed over the letter dt.05.11.2019 in the Office of 1st respondent, the 1st respondent informed the representative of petitioner-Company that assessment orders of the company for the tax periods 2012-13, 2013-14 and 2014-15 were passed by 1st respondent, and the show-cause notices as well as Assessment Orders which were sent for service were returned '*un-served*' and the tax arrears for these three years amounted to Rs.1,16,45,978/-, Rs.1,19,55,881/- and Rs.1,34,59,096/- for the Assessment Years 2012-13, 2013-14 and 2014-15 respectively, totaling to Rs.3,70,60,955/-; and handed over assessment orders for these three Financial Years to the representative of petitioner-Company.

12. The petitioner contends that a perusal of the Assessment Orders indicate that show-cause notices as well as Assessment Orders were sent to the previous address of petitioner in Madhapur Village, though change of address of petitioner had been informed by petitioner in Form VAT 113 to the 1st respondent on 31.05.2015 itself; that it was incumbent on the part of the Officer making Assessment to take note of the change of address and issue show-cause notices to the new address of petitioner after 31.05.2014, and this has not been done; and that the 1st respondent had proceeded to pass Assessment Orders as if there was no change in the address of petitioner-Company.

13. The petitioner further contends that when show-cause notices themselves were not served on petitioner for these Assessment Years, there could not have been any assessment order and there has been a grave violation of principles of natural justice.

14. The counsel for petitioner relied on Section 19 of the Telangana VAT Act, 2005 and Rule 13 thereof dealing with procedure for change of registration of a dealer, and contended that petitioner had complied with the same; and if the respondents had not taken note of the change of address of petitioner erroneously, the petitioners cannot be penalized.

15. The petitioner therefore prays that the three Assessment Orders in question be set aside; that it may be served by the jurisdictional Assessment Officer show-cause notices afresh for the said periods, that its explanation to the said show-cause notices be received by the said Officer; and then the said Officer should pass assessment orders afresh in accordance with law.

16. The Special Government Pleader for Commercial Taxes, State of Telangana, appearing for respondents in all the Writ Petitions, does not dispute the Form VAT 112 submitted by petitioner indicating change of address of petitioner on 31.05.2014 was received by the Office of 1st respondent.

17. Once the intimation in Form VAT 112 from the petitioner had been received by Office of 1st respondent, it is the duty of 1st respondent to take note of change of place of business of petitioner, grant approval of the said application and remove registration of the petitioner from the existing registration records of 1st respondent; and in the event new location of petitioner's business falls within the jurisdiction of another Assessing Authority he should transfer the application to such authority who shall then record the new address in his records and issue a new registration certificate of VAT Registration with the existing TIN number. But, this has not happened.

18. It appears that on account of this oversight, the Office of 1st respondent had not taken steps prescribed in Rule 13 read with Section 19 of the Telangana VAT Act, 2005 and taken note of the change in the place of business of petitioner which has resulted in the passing of the above three Assessment Orders without service of prior show-cause notices for the year 2012-13, 2013-14 and 2014-15 against the petitioner. Thus, there has been grave violation of principles of natural justice.

19. In this view of the mater, the Writ Petitions are allowed. The Assessment Orders dt.30.03.2019 for the tax period 2012-13, dt.17.05.2019 for the tax period 2013-14, and dt.17.05.2019 for the tax period 2014-15 passed by 1st respondent, are accordingly set aside.

20. The 1st respondent shall follow the procedure prescribed in Rule 13 of the Rules framed under the Telangana VAT Act, 2005 and forward the application of petitioner, if necessary to the jurisdictional Assessing Authority having jurisdiction over the new address where place of business of petitioner is located after 31.05.2014. The jurisdictional assessing authority shall then issue a new certificate of VAT Registration with the existing TIN number to petitioner. Thereupon, the jurisdictional Assessing Authority, having jurisdiction over the area to which the petitioner had moved after 31.05.2014, shall issue a show-cause notice to petitioner for the Assessment Years 2012-13 [Writ Petition No.25382 of 2019], 2013-14 [Writ Petition No.25409 of 2019], and 2014-15 [Writ Petition No.25436 of 2019] proposing assessment of the VAT returns for that period submitted by petitioner; and grant the petitioner four (04) weeks time to submit response to the show-cause notices, and then pass a fresh order in accordance with law, and communicate it to petitioner.

21. It is open to petitioner to raise all defenses open to him in law in response to the show-cause notice which would be issued by the jurisdictional Assessing Officer.

22. Accordingly, the Writ Petitions are allowed with the above directions. No order as to costs.

23. As a sequel, miscellaneous petitions pending if any in these Writ Petitions, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

JUSTICE K. LAKSHMAN

Date: 19.11.2019
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