THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

and

THE HONOURABLE SRI JUSTICE T. AMARNATH GOUD

<u>Writ Petition No.22199 of 2019</u>

<u>ORDER</u> : (per Hon'ble M.S. Ramachandra Rao)

This Writ Petition has been filed by petitioner assailing the Assessment Order No.1604 dt.18.01.2019, passed by 1st respondent.

2. The petitioner deals with 'fire safety equipment'.

3. The 1st respondent audited the books of account of petitioner for the tax period April, 2013 to June, 2017, pursuant to an authorization issued by the Deputy Commissioner; and after auditing the books of account, the 1st respondent issued show-cause notice dt.05.11.2018 proposing to reject input tax credit claimed by petitioner, and inviting objections to be filed by petitioner.

4. On account of the mistake of the accountant of petitioner, the objections were not filed in time.

5. Thereafter, another notice was issued by 1st respondent on 27.12.2018 directing petitioner to file objections along with the relevant documents.

6. The petitioner then requested the 1st respondent again to grant time to file objections till 15.01.2019 by making an endorsement since he would be away at his native place on account of Sankranthi festival.

7. However, the petitioner forgot about it and when he next met the 1st respondent on 18.01.2019, the 1st respondent had already passed the impugned assessment order.

8. The petitioner did not even avail the remedy of appeal to the 1st Appellate Authority and it became time-barred under Section 31 of the Act.

9. Therefore, the petitioner has filed the present Writ Petition seeking an opportunity to reply to the show-cause notice issued by the 1st respondent on 05.11.2018.

10. Sri J. Anil Kumar, Special Counsel for Commercial Taxes, appearing for respondents, contended that opportunities were given to the petitioner but not availed, and therefore, no further indulgence should be shown to him.

11. Considering the fact that levy of an amount of Rs.39,78,973 under the provisions of the TVAT is sought to be imposed on the petitioner, and since the petitioner was not diligent enough to avail the earlier opportunities afforded to him by the 1st respondent, on deposit of 25% of the above amount within four (04) weeks, the impugned Assessment Order No.1604 dt.18.01.2019, passed by the 1st respondent is set aside, and the matter is remitted back to the 2nd respondent for fresh consideration.

12. The 2nd respondent shall permit the petitioner to file objections to the show-cause notice dt.05.11.2018 issued to the petitioner;

consider the same, and pass a reasoned order in accordance with law, and communicate it to the petitioner.

13. In default of payment of above amount, the Writ Petition shall stand dismissed.

14. Accordingly, the Writ Petition is disposed of with the above directions. No order as to costs.

15. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

JUSTICE T. AMARNATH GOUD

Date: 17.02.2020
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