HON'BLE SRI JUSTICE R.SUBHASH REDDY
AND
HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

WRIT PETITION No.2580 of 2003

ORDER : (per Hon'ble Sri Justice R.Subhash Reddy)

This writ petition is filed by the petitioner seeking *Mandamus* declaring the action of the 1st respondent in detaining the consignment of 165 quintals of moong dall being transported in a Lorry bearing registration No.AP16 X 67 on 24.7.2002 and collecting tax of Rs.10,000/- without passing any orders, as arbitrary and illegal, and consequently, sought a direction to the 1st respondent to refund the said amount with interest.

2. The petitioner is a Partnership Firm, having its registered office at Mettakur, Yanam, Pondicherry State. It is a dealer in pulses at Yanam, doing the business of buying and selling different pulses/dall and other commodities. From the invoice dated 21.7.2002, the petitioner has sold 330 bags of moong dall to one Sri Bag Chand Jain of Barapet in Assam State, for Rs.4,46,900/- and the same was being transported in a Lorry bearing registration No.AP16 X 67. While so, the petitioner was issued a detention show cause notice dated 24.7.2002 alleging that during transit, the said vehicle was intercepted and seized by the 1st respondent-Assistant Commercial Tax Officer, Integrated Check-Post,

Purushothapuram, Srikakulam District, on 24.7.2002, and on verification of the documents, which were being carried in the vehicle, it is revealed that Sri Bhavani Traders, Hyderabad, an agent in pulses, has purchased the goods and sold to a dealer of Assam State. Under the provisions of Section 2(e)(iv) of the A.P. General Sales Tax Act, 1957 (for brevity "the Act"), it is alleged that Sri Bhavani Traders as an agent effected inter-State sales to Assam and liable to tax at 8% on the value of Rs.4,46,900/-, besides penalty under the provisions of the Central Sales Tax Act, 1956. In the said notice, objections were also called for, provided such tax liability is not accepted. Pursuant thereto, the detention show cause notice dated 24.7.2002 was served on the petitioner on 25.7.2002, to which the petitioner has filed a detailed explanation dated 25.7.2002 denying various allegations made by the 1st respondent. It is the case of the petitioner that the commodity sold to Sri Bag Chand Jain at Assam is exempted from tax. It is further pleaded that Sri Bhavani Traders is only an agent and, as such, it cannot be treated as a dealer. Thereafter, it appears that on 26.7.2002 by collecting tax amount of Rs.10,000/- the goods were released.

3. This writ petition is filed alleging that even after filing objections, no orders are passed by the Assessing Authority in support of its action to levy tax at 8% on the value of Rs.4,46,900/- and collection of such tax is arbitrary and illegal.

4. Counter affidavit is filed by the 1st respondent-

Assistant Commercial Tax Officer. In the counter affidavit, while denying various allegations made by the petitioner, it is stated that on 24.7.2002 the physical verification of the stocks that are available in the vehicle revealed that there is an excess stock of pulses worth Rs.2,50,000/- and, in view of the admission made by the driver carrying such excess stock, his statement was recorded and goods were released on 26.7.2002 after collecting a sum of Rs.10,000/- towards tax pursuant to the demand notice dated 24.7.2002. It is also stated that the petitioner has effected inter-State sales from Andhra Pradesh to a registered dealer under Central Sales Tax Act, who is situated in the State of Assam and hence Central Sales Tax was collected at 4% on the turnover of Rs.2,50,000/-, which worked out to Rs.10,000/-, and this levy was made by the office order vide D.R.No.1996/02-03, dated 26.7.2002. It is further stated that as the order was not accepted by the driver of the vehicle, the same was affixed on the lorry on 26.7.2002 itself as contemplated under Rule 58(a) of the A.P. General Sales Tax Rules, 1957. In the counter affidavit, it is categorically stated that the disputed tax is not levied on the green gram dall, which is covered by documents, worth Rs.4,46,900/- and the said levy is only made on the excess green gram dall worth Rs.2,50,000/-, which is not supported by any documents.

5. Having heard learned counsel for the parties, we have perused the impugned order dated 24.7.2002 and the material

on record.

6. Rule 58 of A.P. General Sales Tax Rules, 1957 (for brevity "the Rules") reads as under:

> "The service on a dealer (…) of any notice, summons, order or proceedings under the Act or under these rules may be effected in any of the following ways, namely:-0
>
> (a) by giving or tendering it to such dealer (…), or his manager or agent; or
> (b) if such dealer (…) or his manager or agent is not found by leaving it at his last known place of business or residence or by giving or tendering it to adult member of his family; or
> (c) if the address of such dealer (…) is known to assessing authority, by sending it to him by registered post; or (and if it is returned unserved, it shall be put on notice board of the office of the assessing authority or the notice board in the office of the local Chamber of Commerce or Traders Association, and it shall be deemed that the said notice or summons or proceedings are served on the dealer and action shall be taken in pursuance thereof accordingly.)
> (d) if any or all of the modes aforesaid is not practicable, by affixing it in some conspicuous place at his last known place of business or residence."

A perusal of the explanation filed by the petitioner in response to the show cause notice dated 24.7.2002 shows that clear address of the petitioner-dealer is available, in which event, the 1st respondent should have sent the assessment order, if any, to the petitioner by registered post acknowledgement due. In the event, it is returned unserved, the method of service provided is by affixing the same in the notice board of the office of the assessing authority or Chambers of Commerce or Traders Association.

7. In the counter affidavit, it is clearly stated that an attempt was made to serve notice on the driver of the lorry and only on the ground that he refused to accept the same, it was

affixed on the lorry. It is fairly well settled that if a particular procedure is contemplated under the Rules for service of notice or orders, it shall be followed without any omission.

8. In view of the allegation of the petitioner that there is no assessment order and further the alleged assessment order is not properly served as contemplated under the Rules framed as per the provisions of the Act, it shall be construed that the assessment order is not at all served on the petitioner.

9. Further, it is also to be noticed that the allegation in the show cause notice dated 24.7.2002 is that, on verification of the documents it is revealed that Sri Bhavani Traders, an agent purchased the goods and sold to a dealer of Assam State and, as such, the said Sri Bhavani Traders is to be treated as a dealer and, in view of the inter-State sales, the commodity i.e., Moong Dall is liable to tax at 8% on the sale value of Rs.4,46,900/-. Further, when objections are filed by the petitioner, having not responded to the same and having not served the assessment order as contemplated under the Rules, for the first time, in the counter affidavit, it is stated that an amount of Rs.10,000/- is collected on the excess commodity, which is not covered by the documents, which allegation is not there in the show cause notice dated 24.7.2002, it is not open for the respondents to supplement the reasons in the show cause notice by way of averments in the counter affidavit, when the petitioner has questioned the specific order passed by the respondents in the writ petition.

Such allegations made in the counter affidavit are beyond the scope of the allegations made in the show cause notice.

10. Therefore, in the absence of service of any assessment order on the petitioner as per the procedure contemplated under the Rules and further in view of the stand taken by the respondents in the counter affidavit, which is totally in variance with the stand taken in the show cause notice dated 24.7.2002, we are of the view that the tax collected by the respondents from the petitioner is arbitrary, illegal and in violation of the procedure contemplated under the Rules. As it is the allegation of the petitioner that the alleged amount of tax is lying with the respondents for the last more than 10 years, the respondents are liable to pay interest at 9% per annum. As the goods of the petitioner were also released, we deem it appropriate to dispose of the writ petition with a direction to the respondents to refund the amount of Rs.10,000/- collected from the petitioner towards tax with interest at 9% per annum, by sending the same by way of Demand Draft through registered post with acknowledgement due, to the correct address of the petitioner, within a period of eight weeks from the date of receipt of a copy of this order.

11. Subject to the above directions, this writ petition is disposed of. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE R. SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

02.03.2015.
Msr

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AND
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