THE HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
THE HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.18625 OF 2002

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

In this writ petition, the petitioner has questioned the orders dated 09.05.2002 passed by the respondent/the Deputy Commercial Tax Officer, Kurnool, for the assessment years 1993-94 to 1996-97 in C.No.245/2001-B2, in exercise of powers under Section 32 of the A.P.General Sales Tax Act, 1957(for short, 'APGST Act').

2. The petitioner is a Saw Mill and is a registered dealer under the APGST Act, engaged in the business of timber. The tax liability of the petitioner with regard to the aforesaid 4 assessment years was completed. For the assessment year 1993-94, assessment was completed on 14.09.1994, for the assessment year 1994-95, assessment was completed by order dated 26.10.1995 even before the inspection. For the assessment year 1995-96, assessment was completed on 16.03.1999 and for the assessment year 1996-97, assessment was completed on 23.02.2000. The business premises of the petitioner was inspected by the Regional Vigilance and Enforcement Officer,

Kurnool, during the period from 15.05.1996 to 20.05.1996, in view of the allegation that the petitioner/dealer has suppressed sales turnover. The offence is compounded by collecting fee of Rs.3,000/- as contemplated under Section 32(1)(b) of the Act. Subsequently, in the year 2002, the respondent issued notices increasing composition amount, by invoking power under Section 32(1)(a) of the APGST Act, on the allegation that the prescribed authority may accept from any persons, who has committed or is reasonably suspended of having committed an offence under the Act, where the offence consists of failure to pay or the eviction of any tax recoverable under the Act, in addition to the tax so recoverable, a sum of money not exceeding Rs.3,000/- or double the amount of tax due whichever is greater.

3. The said notices here contested by the petitioner by filing reply, stating that compounding fee can be collected at the time of inspection only; the authorities have not issued any notice or order and the respondent had not taken any further action; the assessments were completed and reassessment to be completed within three years. In that regard, the respondent while holding that the contentions of the petitioner are not tenable because the offence proceedings are entirely different to that of the

assessment proceedings, passed the impugned orders for payment of further amount as contemplated under Section 32(1) (a) of the Act.

4. Having heard the learned counsel appearing for petitioner and also learned Special Standing Counsel for Commercial Taxes appearing for respondent, we have perused the material on record.

5. In this case, it is not in dispute that the inspection was done during the period from 15.05.1996 to 20.05.1996 and at that time it is noticed that the petitioner/dealer suppressed the sales turnover for the aforesaid assessment years. The Regional Vigilance Enforcement Officer, collected the amount of Rs.3,000/- towards the composition fee for the offence under Section 32(1)(a) of the Act. As per the provision under Section 32(2) of the Act, any order passed or proceeding recorded by the prescribed authority under Sub Section (1) shall be final and no appeal or application for revision shall lie therefrom. In view of the said provision, when the offence was compounded by collecting fee as per provisions contemplated under Section 32(1)(b) of the Act, it is not open to the respondent to reopen the matter and increase composition amount by invoking power under Section

32(1)(a) of the Act. Further it is also to be noticed that inspections were made during the year 1996 from 15.05.1996 to 20.05.1996, however, proceedings are initiated in May, 2002 nearly after 5 ½ years. Even for the revision of assessment, the limitation contemplated is only 4 years. Further, in view of the absence of any enabling provision to review the order passed under Section 32 of the Act, the impugned order passed by the respondent is without any jurisdiction and at the belated stage.

6. For the aforesaid reasons, the Writ Petition is allowed and the impugned order passed by the respondent dated 09.05.2002 in R.C.No.245/2001-B2, revising the order of the assessing authority, is set aside.

7. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. No costs.

R.SUBHASH REDDY, J

Dr. B. SIVA SANKARA RAO, J

February 24, 2015

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