THE HON'BLE SRI JUSTICE K.C.BHANU

AND

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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SPECIAL APPEAL No.15 of 2004

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JUDGMENT: (per Hon'ble Sri Justice M.Seetharama Murti)

This is an appeal filed by the appellant/dealer assailing the proceedings CCT's Ref.LV (3)/2961/2001, dated 17.01.2004, issued by the Commissioner (Commercial Taxes), Office of the Commissioner of Commercial Taxes, Andhra Pradesh, Hyderabad.

2. We have heard the submissions of the learned counsel for the appellant/dealer and the learned Special Government Pleader for Taxes. We have perused the material record.

3. The facts, in brief, are as follows:

The assessee was finally assessed to tax for the year 1995-1996 under the Andhra Pradesh General Sales Tax Act, 1957 (for short, 'the Act') to the best of judgment vide proceedings No.GINO.2401/95-96, dated 21.03.1998, on the total and net turnover of Rs.11,41,37,500/- and Rs.4,95,04,030/- respectively. The net turnover includes suppressed machinery sales turnover of Rs.1,16,64,000/- arrived by the assessing authority at the time of final assessment based on the incriminating material detected and communicated by the Commercial Tax Officer, Intelligence No.8, Enforcement Wing, Hyderabad, from the business premises of
M/s. Lakshmi Motor Credit Limited (Consignee) who purchased the disputed machinery from the assessee. In the circumstances, the assessing authority levied penalty of Rs.34,99,200/- being three times the tax due on the said suppressed

turnover as per Section 14 (2) (8) of the Act vide proceedings in P.R.No. /98-99 and in GINO.2401/95-96, dated 12.04.99. Aggrieved by the said penalty order, the assessee had preferred an appeal before the Appellate Deputy Commissioner (CT), Kakinada. The Appellate Deputy Commissioner had allowed the appeal vide appeal No.Vzm/106/99-2000, dated 27.01.2000 on the ground that after lapse of almost one year from the date of assessment order, penalty order was passed on 12.04.1999 which was served on the dealer on 06.05.1999. While revising the said order by exercising the powers under Section 20 (1) of the Act, the Commissioner (CT) had set aside the order of the Appellate Deputy Commissioner (CT), Kakinada, and restored the penalty proceedings issued by the Commercial Tax Officer, Rajam. Aggrieved by the said order, the appellant/dealer preferred this appeal.

4. Learned counsel for the appellant/dealer had contended that the Commercial Tax Officer, Rajam, had initiated proceedings and levied penalty of Rs.34,99,200/-; that aggrieved by the said order, the assessee preferred an appeal before the Appellate Deputy Commissioner (CT), Kakinada, and the Appellate Deputy Commissioner (CT), Kakinada allowed the appeal on the ground that after lapse of almost one year from the date of assessment order, penalty was levied and not within a proximate time; that ultimately, by impugned proceedings, levy of tax itself was set aside by the Commissioner (CT), therefore the penalty cannot be sustained. He further contended that the order levying penalty is passed without jurisdiction.

5. On the other hand, learned Special Standing Counsel for Commercial Taxes contended that proceedings are initiated to revise the orders in accordance with the procedure established by law and bring the turnover to levy of tax once again as per law.

6. In the above stated factual back ground, we deem it appropriate to set aside the impugned order for the present. Levy of penalty by allowing the appeal, leaving the question open for consideration in case, the turnover which is the subject matter is once again brought to levy by any valuable orders, which the law permits.

7. Accordingly, the appeal is allowed and the impugned order of the Commercial Tax Officer, Rajam is set aside subject to the observation that the Department is at liberty to initiate fresh proceedings which law permits and **thereafter**, turnover for levy of tax and impose penalty. However, at the same time,

the appellant/dealer is entitled to raise all the contentions which are open to him under facts and law and if any such contentions are raised, the same shall be considered in accordance with the procedure established by the department. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

K.C.BHANU, J

M.SEETHARAMA MURTI, J

MARCH 11, 2015

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THE HON'BLE SRI JUSTICE K.C.BHANU

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DATE: 11.03.2015

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