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

WRIT PETITION No.12211 of 2003

ORDER : (Per Justice R. Subhash Reddy)

This writ petition is filed seeking directions by way of Mandamus to declare the notice dated 16.04.2003, issued by the Commercial Tax Officer, Gazuwaka, Visakhapatnam and the further assessment order dated 30.05.2003 passed in G.I.No.Nil/2001-2002 by the same officer, as illegal and arbitrary.

2. Petitioner is a Proprietary Concern, engaged in the business of transporting dairy products to M/s.Visakha Cooperative Dairy. During the assessment year 2001-02, the petitioner has received lease rentals from Visakha Cooperative Dairy. The said lease rentals attract tax under Section 5-E of the Andhra Pradesh General Sales Tax Act, 1957 (APGST Act). As the petitioner is supplying vehicles for the purpose of transportation, he is a 'dealer' within the meaning of Section 2(e) of the APGST Act.

3. The respondent-Commercial Tax Officer, Gazuwaka, Visakhapatnam, has issued notice dated 16.04.2003 on the ground that in view of the provision under Section 5-E of the APGST Act, petitioner is liable to pay tax on lease rentals received in respect of transfer of right to use of any goods for any purpose. In the said notice, it is further stated that the petitioner has received

an amount of Rs.35,13,248/- during the year 2001-02 towards lease rentals in respect of transfer of right to use goods, as such, he is liable to pay tax of Rs.2,81,060/-, and he is directed to pay the tax within a period of three days from the date of receipt of said notice. Further assessment order is also passed by the Commercial Tax Officer, Gazuwaka on 30.05.2003, issued in G.I.No.Nil/2001-02, assessing the tax payable by the petitioner at Rs.2,81,060/- and ordered for issuance of demand notice in Form-B3.

4. In this writ petition, petitioner seeks invalidation of the urgent notice dated 16.04.2003 and the further order dated 30.05.2003, issued in Proceedings G.I.No.Nil/2001-02, mainly on two grounds, namely, as the petitioner is ordinary resident of Prakasam District, the Commercial Tax Officer, Gazuwaka, Visakhapatnam is not having jurisdiction to pass assessment order and to issue demand for realizing the tax, and that he is not given any opportunity of being heard on the proposed assessment and the procedure contemplated under Section 14 of the APGST Act, is not followed before passing the impugned order.

5. Counter affidavit is filed on behalf of respondent. In the counter affidavit, it is stated that the Regional Vigilance and Enforcement Officer, Visakhapatnam has visited the business premises of M/s.Visakha Cooperative Dairy, Visakhapatnam and ascertained that certain transport

contractors have entered into agreements with the said Dairy, during the year 2001-02 and received lease rentals from it, and accordingly, he informed the respondent to take immediate action for collecting tax under Section 5-E of the APGST Act, as the lease rentals received by the contractors attract tax under Section 5-E of the Act. It is stated that on such information furnished by the Regional Vigilance and Enforcement Officer, Visakhapatnam, an urgent notice dated 16.04.2003 has been issued to the contractors stating that they are liable to pay tax under Section 5-E of the Act and requested them to pay the same within a period of three days and having received the notice dated 16.04.2003, as the dealers did not file any replies, further orders are passed on 30.05.2003. Further, with regard to jurisdiction, it is stated that the petitioner is an unregistered dealer under the provisions of the APGST Act and his contract is with M/s.Visakha Cooperative Dairy at Visakhapatnam, as such, the respondent alone is competent authority to assess such unregistered dealers under the provisions of the APGST Act.

6. Learned counsel for petitioner has placed reliance on the notification issued in G.O.Ms.No.728, Revenue Department, dated 14.07.1970 in support of his argument that the petitioner is ordinary resident of Prakasam, as such, respondent is not having jurisdiction. It is evident from the order passed by the 2nd respondent that the said

orders are not preceded by any notice inviting objections from the petitioner. The notice, dated 16.04.2003, issued by the respondent is not a show cause notice at all. Even by the said notice itself, petitioner was demanded to pay a sum of Rs.2,81,060/-. It is clear from the counter affidavit also, that the notice referred to is only the notice dated 16.04.2003 and there is no other notice issued prior to passing the order dated 30.05.2003, calling upon the petitioner to file his objections. In that view of the matter, we are of the view that the impugned order is passed in violation of Section 14 of the APGST Act, and hence, it is liable to be set aside only on the ground that the said order is passed without giving proper opportunity.

7. For the aforesaid reasons, we deem it appropriate to dispose of the writ petition with a direction to the respondent to treat the order dated 30.05.2003, issued by him in Proceedings G.I.No.Nil/2001-2002 as show cause notice and the petitioner shall file his objections to the same within six weeks from today. On filing such objections, the Commercial Tax Officer, Gazuwaka, Visakhapatnam shall pass appropriate orders after hearing the petitioner. The petitioner shall indicate his current address and mobile phone number along with the objections to be filed and it is open to the respondent to communicate to such address and phone number for the purpose of hearing.

8. Subject to the above directions, the writ petition is

disposed of. No costs.

Pending miscellaneous applications, if any, shall stand closed.

R. SUBHASH REDDY, J

DR. B. SIVA SANKARA RAO, J

9th March 2015
ajr