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

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WRIT PETITION No.681 OF 2015

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

Heard learned counsel for the petitioner and learned Special Government Pleader for Commercial Taxes.

As it is stated that the subject matter of this Writ Petition is covered by a Division Bench judgment of this Court in **Radheshyam and Co., Hyderabad v. Assistant Commissioner (CT) VMU – II, Hyderabad and others**[1], this Writ Petition is disposed of at the stage of admission.

The Writ Petition is filed questioning the order, dated 16.12.2014, in AO:13324, levying tax of Rs.5,67,263/-, and the consequential order, dated 03.01.2015, in AO:101, passed by the Deputy Commercial Tax Officer, Nizamabad – respondent No.3, on several grounds, including the ground that respondent No.3 is not authorised as on the date of initiation of proceedings to pass the assessment order.

The petitioner is a partnership concern carrying on business in supply of food stuffs, liquor and beer, and is a registered dealer on the rolls of respondent No.2 under the Telangana Value Added Tax Act, 2005. It is the case of the petitioner that pursuant to the notice, dated 16.10.2014, issued in Form VAT 305A, the impugned order, dated 16.12.2014, was passed, but the authorisation was issued by the Deputy Commissioner (Commercial Taxes), Nizamabad Division, to respondent No.3 only on 14.11.2014 in Form ADM 1C No.20141114592101, and hence, the impugned orders passed by respondent No.3 are illegal and contrary to the Rules. In support of the same, the petitioner relied on a Division Bench judgment of this Court in **Radheshyam and Co.'s** case (supra), wherein, this Court, while interpreting Rule 59 of APVAT Rules, 2005, has held that the assessing authority has to obtain separate authorisation from the territorial Deputy Commissioner for undertaking the assessment after conducting audit and initiation of assessment proceedings by issuance of a show-cause notice and later obtaining authorisation for completion of assessment is contrary to Rule 59 (1) (4) of the aforesaid Rules and such proceedings are without authorisation.

We have perused the aforesaid judgment. In view of the aforesaid judgment of this Court and as it is not in dispute that as on the date of issuance of show-cause notice, respondent No.3 was not having valid authorisation for assessing the tax payable by the petitioner and the authorisation was obtained subsequent to issuance of show-cause notice, we are of the view that it is a fit case to set aside the impugned orders.

Accordingly, the Writ Petition is allowed. The order, dated 16.12.2014, and the consequential rectification order, dated 03.01.2015, are set aside. However, it is left open to the competent authorities to initiate fresh proceedings and pass appropriate orders.

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

R.SUBHASH REDDY, J

Dr. B. SIVA SANKARA RAO, J

28th January, 2015

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[1] 2014 58 APSTJ 51