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

WRIT PETITION No.20028 of 2002

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

This writ petition is filed seeking directions by way of Mandamus to declare the action of the respondent in collecting tax of Rs.1,00,030/- and penalty of Rs.4,00,120/- from the petitioner, as illegal and arbitrary.

It is the case of the petitioner that one Uttamchand Bafna is the Proprietor of M/s. Kamadhenu Jewellers, having registered place of business at No.16, Veerappan Street, Shanthi Complex, Chennai. He is the dealer in gold and silver ornaments and an assessee of the Commercial Tax Officer, Peddunaickenpet (South) Assessment Circle at Chennai, holding Registration No.TNGST-0281270 and CST No.87275 dated 28.02.2001. In the affidavit, it is stated that on 20.08.2002, the said Uttamchand Bafna handed over gold ornaments weighing about 1378.8 grams and silver ornaments weighing about 179.68 grams to the petitioner along with an authority letter to represent on his behalf and directed him to go to Madanapalle and Tirupathi along with the said sample jewellery of gold and silver for obtaining booking orders at those places. It is alleged that when the petitioner was in possession of such sample ornaments of gold and silver, the police intercepted him in Madanapalle of Chittoor District and seized the ornaments in spite of producing the vouchers relating to such ornaments. It is also alleged that after seizure of the ornaments, the police called the respondent-Assistant Commercial Tax Officer, Madanapalle and handed over the case to him for further action. It is the case of the petitioner that only for the purpose of obtaining booking orders, such sample ornaments of gold and silver were being carried by him, but under threat and coercion, the respondent has collected an amount of Rs.5,00,150/- towards tax and penalty, which is equivalent to the value of such sample ornaments. Precisely, in this case, it is the grievance of the petitioner that without giving him an opportunity of hearing and without following the procedure contemplated under law, the respondent has collected tax and penalty treating that he was engaged in the business of sale of gold and silver ornaments.

In the counter affidavit filed on behalf of the respondent, it is categorically stated that on 22.08.2002, the Sub-Inspector of Police of II Town Police Station has called the respondent and handed over 1378.8 grams of gold ornaments, 179.68 grams of silver ornaments, cash of Rs.59,500/- with two small account books and 34 slips along with mahazarnama for taking necessary action. It is also stated that during the course of verification, the petitioner was requested to appear before the respondent's office for enquiry and, accordingly, on his appearance, he was enquired in detail about the consignment of the said ornaments, transactions involved in the slips and account books, which were recovered from him, and also about the cash of Rs.59,500/-. It is stated that on such enquiry, the petitioner has stated that he got cash of Rs.59,500/- from the dealers of Vayalpad on the sale of gold ornaments and that he came to Madanapalle for sale of gold and silver ornaments in and around different dealers in the said place. The averments in the counter also disclose that regarding transactions involved in the slips and account books, the petitioner stated that the slips relate to the orders and the account books relate to the earlier sale of gold and silver ornaments of different dealers of Piler, Vayalpad, Tirupati and Madanapalle. It is stated that in view of the statement made by the petitioner, the goods along with the slips and account books were detained for further action and the orders were passed on 22.08.2002. As the petitioner expressed his willingness to workout the tax portion both on the value of the consignment and the turnover involved in the slips and the account books, the tax portion was worked out to Rs.1,00,030/- and penalty was levied at Rs.4,00,120/- and the same were collected from the petitioner. With regard to the allegation of threat and coercion, the respondent has clearly denied the same. It is pleaded that in the instant case, as much as the tax and penalty were collected from the petitioner after giving him an opportunity of being heard and after passing an order to that effect, he is not entitled for the relief sought by him.

Heard learned counsel for the petitioner and the learned Special Government Pleader for Taxes (A.P) appearing for the respondent.

Though the counter affidavit is filed in the year 2003, no reply affidavit is filed disputing the averments contained therein. Further, during the course of hearing, learned counsel for the respondent has produced the copies of two separate orders, dated 22.08.2002, in Rc.No.140/2002-03 passed by the respondent, determining the tax at Rs.1,00,030/- and penalty at Rs.4,00,120/-.

From the material placed on record, it is clear that two separate orders were passed by the respondent determining the tax liability and the penalty, based on the value of the consignment of gold and silver ornaments and also the turnover involved in the account slips and account books, which was arrived at from the material placed by the petitioner. Both the orders, dated 22.08.2002, have become final and the petitioner has not chosen to question either the order of determination of tax liability or the order of penalty. In view of the averments made in the counter affidavit and in the absence of questioning the orders, dated 22.08.2002, passed by the respondent, we do not find any merit in this writ petition so as to grant the relief prayed for by the petitioner.

Accordingly, the writ petition is dismissed. No order as to costs.

As a sequel, miscellaneous petitions, if any pending, shall stand closed.

JUSTICE R. SUBHASH REDDY

Dr. JUSTICE B.SIVA SANKARA RAO

06.03.2015
v v