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

WRIT PETITION No.9358 OF 2001

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

This Writ Petition is filed with the prayer, which reads as under:

> "…to issue Writ of Mandamus or any other appropriate writ or order or direction directing the respondents to forbear from proceeding further in pursuance of Notice dated 28.04.2001 and notice Rc.No.112/2000, dated 02.01.2001 issued by the Respondent No.1 and direct the Government to extend the benefit of tax deferment for a period of five years from September, 1997 i.e., the date of implementation of Tax deferment Scheme to the petitioner industry in respect of taxes relatable to the Assessment years 1994-95 to 1998-99 or in alternative from 03.05.1997, when the Commissioner of Commercial Taxes issued communication extending tax deferment scheme in terms of G.O.Ms.No.131, dated 27.06.1996 and and pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstance of the case."

2) A notice dated 02.01.2001 is issued by the Deputy Commissioner, Commercial Tax Office, Amadalavalasa to the petitioner demanding the payment of an amount of Rs.29,50,260/- towards arrears of tax payable by the petitioner under the provisions of the Andhra Pradesh General Sales Tax Act. In the said notice, the tax arrears, payable by the petitioner, shown as under:

B3 Tax 94-95	Rs. 3,31,403.00
B3 Tax 95-96	Rs. 9,90,927.00

B3 Tax 96-97	Rs.12,56,021.00
Provl. Tax 97-98	Rs. 3,71,909.00

	Rs.29,50,260.00
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3) In the notice, it is stated that the petitioner was granted deferment of tax for an amount of Rs.17,99,000.00 for a period of five years from 23.05.1994 to 22.05.1999 subject to certain conditions; however, the petitioner has stopped the business during 1997-98. On the ground that the petitioner violated the conditions laid down in the eligibility certificate, petitioner is informed that it is liable for payment of the aforesaid amount of Rs.29,50,260/-. A further notice in Form No.5, dated 28.04.2001, was issued for attaching the land of the petitioner for realisation of such arrears.

4) The petitioner-company is given benefit of sales tax exemption in terms of order in G.O.Ms.No.117, Industries and Commerce (IFR) Department dated 17.03.1993 for availing the benefit for a period of five years from 23.05.1994 to 22.05.1999. Subsequently, the Government has issued orders vide G.O.Ms.No.131, Industries and Commercial (IP) Department, dated 27.06.1993, by allowing the benefits of sales tax deferment, on the application made by the petitioner, to switch over from the benefit of sales tax exemption to the sales tax deferment. In view of the application made by the petitioner, the same was switched over from the sales tax exemption scheme which was allowed earlier.

5) At the time of issuance of tax deferment eligibility certificate, certain conditions were imposed, one of which is that

the petitioner has to continue the business double the period of deferment period i.e., 10 years. But contrary to the condition, the petitioner has stopped the business. As such, the respondents have issued notice demanding the recovery of arrears to a tune of Rs.18,55,580/- towards sales tax for the deferred period and further amount of Rs.3,80,185/- which is not covered by deferment for the assessment year 1997-98.

6) This Court, at the stage of admission, while admitting the writ petition, granted interim orders on condition of the petitioner depositing Rs.5,00,000/-. In the counter affidavit filed on behalf of the respondent, it is stated that the petitioner has already deposited the said amount of Rs.5,00,000/-.

7) In this writ petition, it is contended by the learned counsel for the petitioner that as certain monies were to be recovered from the electricity board, which were not paid to the petitioner, as such, the amount demanded towards tax could not be paid by the petitioner in view of the financial exigency. It is further submitted that the unit has been stopped for the reasons beyond its control; as such, there is no reason to deprive the deferment scheme which is permitted or to deny the deferment scheme for the payment of arrears of tax.

8) From the material placed on record, it is clear that the earlier exemption was converted to deferment subject to certain conditions. One of the conditions is to run the unit for a period of 10 years i.e., double the period of deferment period. But contrary to the conditions laid down in the eligibility certificate, the petitioner has stopped the business and therefore, the respondents have rightly issued demand notices to recover the

entire tax for the deferred period and also the amount due for the assessment year 1997-98. When the scheme of deferment is permitted subject to certain conditions, having violated the conditions, the petitioner is not entitled to the relief as prayed for.

9) As much as the petitioner has already paid Rs.5,00,000/- and as the petitioner pleaded that he closed the business due to financial exigency, the petitioner is granted three months' time to pay the balance amount of tax due to the Department. Failing to do so, the respondents are at liberty to take further steps to recover the balance amount of tax from the petitioner according to law.

10) The writ petition is dismissed with the observations as indicated above. As a sequel, miscellaneous petitions pending, if any, in this writ petition shall stand closed. No order as to costs.

R. SUBHASH REDDY, J

Dr. B. SIVA SANKARA RAO, J

March 24, 2015
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