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.492 OF 2014

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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 declaring the action of the 2nd respondent in rejecting the appeal by proceedings dated 30.12.2013 served on the petitioner on 03.01.2014 as arbitrary, contrary to the provisions of the Act and in violation of principles of natural justice and rule of law and set aside the same as null and void and consequently direct the 4th respondent to revoke the proposed Public Auction Notice, dated 03.01.2014 in Form No.3 proposing to auction on 20.01.2014 the Basmati Rice of 6,940 x 25 Kgs. of the petitioner valued at Rs.83,28,000/- stocked in the Central Warehousing Corporation godown, Nidamanur, Krishna District, and pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstance of the case.'

Petitioner is a proprietary concern carrying on business in Basmati Rice and is a registered dealer on the rolls of Commercial Tax Officer, Krishnalanka Circle, Vijayawada – II. Against the order, dated 27.09.2013, passed in AAONO:50322/2013-14, by the assessing authority i.e., Deputy Commercial Tax Officer determining the tax payable by the petitioner at Rs.91,43,520/- under the provisions of the Andhra Pradesh Value Added Tax Act, 2005 (for short, 'APVAT Act'), the petitioner has preferred an appeal before the Appellate Deputy Commissioner (Commercial Taxes) on 02.12.2013. The appellate authority, by order, dated 30.12.2013, rejected the appeal on the ground that the petitioner has not filed proof of payment of 12.5% of the disputed tax. Thereafter, the petitioner filed letter, dated 03.01.2014, along with a photostat copy of Demand Draft, dated 03.01.2014, for an amount of Rs.11,42,940/- towards 12.5% of the disputed tax. Pursuant to the same, the Appellate Deputy Commissioner (Commercial Taxes) has issued the endorsement, dated 04.01.2014, in Spl.No.VJA.II/57/2013-14 rejecting the request of the petitioner to re-admit the appeal on the ground that the petitioner has failed to file proof of payment of 12.5% of the disputed tax within the time stipulated as per Section 31 of the APVAT Act.

When the matter is called, it is submitted that the petitioner has filed another Writ Petition before this Court seeking release of the seized stocks and this Court has directed to release such stocks on payment of 50% of the disputed tax, and pursuant to the same, the stocks were released on payment of 50% of the disputed tax.

Inasmuch as it is stated that the petitioner has already deposited 50% of the disputed tax, we deem it appropriate to set aside the order, dated 04.01.2014, passed in Spl.No.VJA.II/57/2013-14 with a direction to the Appellate Deputy Commissioner (Commercial Taxes), Vijayawada, to dispose of the appeal filed by the petitioner on merits treating as if such appeal is filed within the time stipulated, on condition of petitioner producing the receipts in proof of payment of 50% of the disputed tax along with a copy of this order within a period of three (3) weeks from today. Further, the respondents are directed not to take any coercive steps to recover the balance disputed tax, pending disposal of the appeal before the Appellate Deputy Commissioner (Commercial Taxes).

Subject to the above, the Writ Petition is allowed. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. No costs.

R.SUBHASH REDDY, J

Dr. B. SIVA SANKARA RAO, J

February 06, 2015
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