HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

<u>WRIT PETITION No.10797 of 2010</u>

-

<u>ORDER</u>: (Per Justice R. Subhash Reddy)

This Writ Petition is filed questioning the order 27.09.2008 passed by the 1st respondent, Commercial Tax Officer Nirmal Circle, Adilabad District-assessing authority, as confirmed by the 2nd respondent-appellate authority, by order dated 30.03.2009, under the provisions of the A.P. Value Added Tax Act, 2005 (for short, "the Act").

2. The petitioner is a proprietary concern carrying on business in execution of works contracts and registered as a dealer on the rolls of the 1st respondent authority, under the provisions of the Act. The 1st respondent-assessing authority, for the tax period of November, 2005 to March, 2006, has passed orders in Form-VAT 305, dated 27.09.2008, demanding of Rs.9,28,475/- from the petitioner. As against the same, the petitioner carried the matter by way of appeal before the 2nd respondent-Appellate Deputy Commissioner, which ended in dismissal. As against the same, this writ petition is filed.

3. The impugned orders were questioned on several grounds, including the ground that the assessing authority did not have specific authorisation to pass assessment order, as contemplated under Section 21(4) of the Act read with Rule 59 of the A.P.Value Added Tax Rules. Learned counsel for the petitioner placed reliance on the judgment in *Sri Balaji Flour Mills V. Commercial Tax Officer-II*.

4. On the other hand, it is submitted by the learned special standing counsel for Commercial Taxes, appearing on behalf of the respondent, that as the assessment orders are passed, basing on the objection raised by the audit authorities, valid authorisation is not

necessary, even if the impugned assessment orders are based on audit objection, unless there is a valid authorisation from the territorial jurisdictional authority, no order could have been passed by the assessing authority.

5. In view of the judgment referred above, unless there is a separate authorisation in favour of the assessing authority, from the territorial jurisdictional authority, the assessment order is in violation of the provisions under Rule 59(2) of the A.P. Value Added Tax Rules.

6. It is fairly admitted by the learned Special Standing Counsel for Commercial Taxes, that the assessing authority did not have any authorisation from the territorial jurisdictional authority, on the date of passing of the order, in view of the judgment referred above.

7. For the aforesaid reasons, we set aside the order dated 27.09.2008 of the 1st respondent-assessing authority, as confirmed by order dated 30.03.2009 of the 2nd respondent-Appellate Deputy Commissioner. It is open to the respondents to pass orders afresh, by obtaining valid authorisation from the competent authority by following due procedure contemplated under law. It is made clear that the disputed tax of 12.5%, paid by the petitioner, would be subject to the result of further orders to be passed by the appellate authority.

8. Writ Petition is accordingly disposed of. No order as to costs. As a sequel, miscellaneous petitions if any pending shall stand closed.

R. SUBHASH REDDY, J

Dr. B. SIVA SANKARA RAO, J

February 10, 2015

ksh/MRR