THE HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 24977 of 2015

ORDER: (per Hon'ble Sri Justice Challa Kodanda Ram)

This writ petition is filed against the Penalty Order passed by the 2nd respondent in AO 29034 dated 02.07.2015 whereby a penalty of Rs.1,59,18,347/- was levied on the petitioner alleging under-declaration of Output Tax and claiming excess Input Tax Credit of VAT for the period 2013-14.

2. The assessee is a manufacturer and trader in edible oils. The assessee came to be assessed for the period 2013-14 by an assessment order dated 23.05.2015 demanding a tax of Rs.6,36,73,390/-. Aggrieved by the said order, the assessee filed appeal before the Appellate Deputy Commissioner (CT), and the Appellate Deputy Commissioner by order 27.07.2015 had partly remanded and partly dismissed the appeal. Pending appeal before the Appellate Deputy Commissioner, penalty proceedings also came to be initiated by invoking Section 53 of the A.P. VAT Act, and a sum of Rs.1,59,18,347/- representing 25% of "tax under-declared" has been levied. Now, the writ petition is filed questioning the penalty order on the ground that the very determination of tax amount on the turnover has been set aside by the appellate authority and thereby the penalty order cannot survive.

3. Heard learned counsel for the petitioner and the learned Government Pleader. Perused the record.

4. Learned counsel for the petitioner submits that the letter dated

03.06.2015 was submitted on receipt of Show Cause Notice dated 27.05.2015 seeking 30 days time for filing objections on the ground that their Head Office is situated at Ahmedabad and they need to get necessary material from their Head Office. Learned counsel also submits that there is no opportunity of hearing granted to the petitioner before passing the penalty order.

5. The penalty order dated 02.07.2015 makes a reference to the notice having been issued to the petitioner in VAT Form 203A on 27.05.2015. The penalty order also records that the petitioner filed a letter dated 03.06.2015 seeking 30 days time. However, thereafter there is no intimation to the petitioner that his request has not been acceded to, and thereby directing him to file objections within a shorter period than sought by the petitioner. In other words, the petitioner had time to file objections going by the date mentioned by the 2nd respondent in the impugned order. The petitioner would have had time to file objections up to 03.07.2015. The impugned order came to be made on 02.07.2015. In other words, there is violation of principle of natural justice especially when the request made by the petitioner seeking time was not refused. The turnovers relating to levy of tax of local sales camouflaged as High Sea Sales for the year 2013-2014, tax on export incentives, application of formula AxB/C under Rule 20(8) of the AP VAT Rules in relation to turnovers pertaining to all the units of the company are remanded back by the Appellate order dated 27.07.2015. Though the above mentioned turnovers are remanded for fresh consideration, the penalty sought to be levied is in relation to the total turnovers alleged to have been under-declared. In that view of the matter, the penalty, if any, that is leviable would need to be re-worked out. In the facts of the present case, it is a fit case to set aside the penalty order dated 02.07.2015, both on facts as well as on the ground of violation of principles of natural justice.

6. Accordingly, the impugned penalty order is set aside. However, the setting aside of the penalty order shall not be construed as expressing any opinion with respect to the merits of the matter. The authorities are at liberty to take appropriate action afresh if the facts on record warrant.

7. The writ petition is, accordingly, disposed of. No costs. Miscellaneous petitions pending, if any, shall stand closed.

G. CHANDRAIAH, J

CHALLA KODANDA RAM, J

11th August, 2015

ksm

HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 24977 of 2015

11th August, 2015

ksm