THE HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION Nos. 23274 and 23624 of 2015

COMMON ORDER:

W.P.No.23624 of 2015 is filed against the assessment order dated 27.05.2015 for the tax period April 2011 to March 2014 under the AP VAT Act, 2005; and W.P.No.23274 of 2015 is filed questioning the penalty order dated 26.06.2015 for the said tax period. The subject matter of these writ petitions being identical, they are taken up together for disposal by way of this common order.

2. The petitioner is a proprietary concern carrying on the business in purchase and sale of cotton, oil seeds such as cotton seed, groundnut, ajwan etc., and it also has a commission agency business in Agriculture Market Committee, Adoni, Kurnool district. For the tax period April 2011 to March 2014, the petitioner filed monthly returns under the AP VAT Act and the CST Act. It is the case of the petitioner that as it purchased goods such as groundnuts, ajwan, cotton kapas etc., from the farmers which are non-creditable purchases, it did not disclose the same in its monthly returns and no input tax credit is claimed in respect of the said turnover. While so, the 2nd respondent issued show cause notice in Form 305A dated 10.02.2015 proposing to levy tax to the tune of Rs.47,96,589/- on the estimated sales of non-creditable purchases, which includes commissioner purchase turnover of Rs.4,66,342/-, Rs.4,864/- on account of difference of tax payable on its sales and Rs.2,407/- on account of excess claim of input. Though the petitioner produced relevant records, the 2nd respondent issued another notice dated 04.05.2015 calling for written objections within five

days, and the said notice was served on the petitioner on 19.05.2015. As the proprietrix of the petitioner-firm was not well, the accountant filed a letter, before the expiry of five days requesting for two months' time for filing objections. Without considering the request, the 2nd respondent passed orders dated 27.05.2015 confirming the demand on the ground that the petitioner has not responded to the show cause notice. The 2nd respondent has also passed a penalty order dated 26.06.2015, levying a penalty equal to the amount of tax. Hence, these writ petitions.

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

4. Learned counsel for the petitioner submits that the petitioner submitted a letter requesting for two months time for filing objections and the said letter was filed before the expiry of five days time, but the 2nd respondent has passed the impugned order without considering the request of the petitioner and hence it is violation of principle of natural justice.

5. Learned Special Government Pleader submits that in the final notice dated 04.05.2015, it was stated that written objections have to be filed within five days, but the assessee, instead of filing objections, submitted a letter seeking further time.

6. A perusal of the letter dated 25.05.2015 filed by the petitioner before the 2nd respondent would show that the petitioner requested for two months time for filing objections as the proprietrix of the petitioner-firm was not well. However, without considering the request of the petitioner, the impugned order was passed by the 2nd respondent. Hence, the impugned order is in violation of the principle of natural justice and the same is liable to be set aside.

7. Hence, without going into the merits of the case, the impugned assessment order dated 27.05.2015 is set aside. Inasmuch as we have set aside the assessment order, the penalty order dated 26.06.2015 cannot sustain and, hence, the same is also set aside. However, considering the fact that there is a long lapse of time, learned counsel for the petitioner shall file objections to the show cause notice along with material documents to support the same, within a period of four weeks from the date of receipt of a copy of this order, and the respondent authorities are directed to take up the assessment proceedings and pass orders after giving due opportunity to the petitioner, in accordance with law.

8. The writ petitions are, accordingly, allowed. No costs. Miscellaneous petitions, if any pending, shall stand closed.

G. CHANDRAIAH, J

CHALLA KODANDA RAM, J

24th August, 2015
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THE HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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