THE HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

THE HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.14467 of 2004

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

In this writ petition, the petitioner seeks a direction by way of Mandamus to declare the action of the respondent in issuing notice, dated 06.08.2004, for recovery of penal interest for the assessment years 2001-02 and 2002-03, as illegal and arbitrary and contrary to protection under Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985.

The petitioner is a registered dealer under the provisions of A.P. General Sales Tax Act (APGST Act) and the Central Sales Tax Act (CST Act) and is an assessee on the rolls of the respondent herein. He filed monthly returns under APGST Act and CST Act for the years 2001-02 and 2002-03, declaring certain taxable turnovers, but paid the taxes belatedly. Therefore, the respondent, in view of the provisions under Section 16 (3) of the APGST Act and Section 9 (2) of the CST Act, issued demand notice, dated 06.08.2004, for recovery of penal interest to a tune of Rs.9,57,516/- and Rs.1,94,640/- for the years 2001-02 and 2002-03 respectively. Hence, this writ petition.

It is the case of the petitioner that due to incurring of heavy losses for about four years continuously, he filed an application before the Board for Industrial and Financial Reconstruction (BIFR), to declare the Company as a Sick Industry and to grant package for its revival, but the said application was rejected on technical grounds. Thereafter, he carried the matter in appeal before the Appellate Authority for Industrial and Financial Reconstruction (AAIFR) and the same is pending. The grievance of the petitioner is that in view of the pendency of the appeal before AAIFR and in view of the provision under Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short 'the Act'), it is not open to the respondent either to levy penal interest on belated payment of tax or to proceed further to recover such amount.

In the counter affidavit filed on behalf of the respondent, while denying the various allegations made by the petitioner, it is stated that the appeal filed by the petitioner before AAIFR was admitted on 02.05.2003. It is also stated that the petitioner has not mentioned the quantum of taxes and other amounts payable, either in the application filed before BIFR or in the appeal filed before AAIFR. It is the specific plea of the respondent that the penal interest amounts are not included in the sanction scheme notified by AAIFR.

In this case, it is not in dispute that for the relevant two assessment years, the petitioner has not paid taxes within time and that in the case of **Prahlad Rai and others vs. Sales Tax Officer, Meerut and others,** the Hon'ble Supreme Court held that when the taxes are not paid within time, the accrual of interest is automatic. Further, having regard to the fact that the taxes are paid belatedly and in the absence of inclusion of penal interest in the scheme notified by AAIFR, it is not open to the petitioner to seek to invalidate imposition of interest on the ground that the matter is pending before AAIFR. Further, the petitioner, having collected the tax from the customers, is not supposed to retain such amount and pay the same belatedly. In that view of the matter and in the absence of inclusion of penal interest in the scheme notified by the AAIFR, we do not find any merit in this writ petition for grant of directions as prayed for and the writ petition is liable to be dismissed.

Accordingly, the writ petition is dismissed. No order as to costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE R. SUBHASH REDDY

Dr. JUSTICE B.SIVA SANKARA RAO

23.03.2015

v v