HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.14521 of 2004

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

This writ petition is filed challenging the notice dated 09.06.2004 in Form-V issued by the 1st respondent-Deputy Commercial Tax Officer, Polavaram, West Godavari District, under the provisions of A.P. Revenue Recovery Act, 1864, published in West Godavari District Gazette on 12.06.2004, as arbitrary and illegal, and consequently sought a direction to the respondents not to proceed against the property of the petitioner for recovery of arrears of tax of the dealer, namely Sri M. Rambabu, Proprietor of M/s. Santhosh Timber and Furniture Works, Koyyalagudem, basing on the surety bond alleged to have been executed by late Sri Seetharamaiah.

2. Petitioners are wife and son, respectively, of one late Sri Seetharamaiah. They are the absolute owners of immovable property bearing D.No.11-172 (new D.No.11-154), Polavaram Road, Koyyalagudem. One Sri M. Rambabu, obtained Registration Certificate under the provisions of the A.P. General Sales Tax Act, 1957 (for brevity "the Act") for doing business in the name and style

of M/s. Santhosh Timber and Furniture Works, on the rolls of 2nd respondent-Commercial Tax Officer, Nidadavolu, West Godavari District. At the time of obtaining Registration Certificate, late Sri Seetharamaiah stood as surety to the effect that he would be held responsible to the tax and other dues from the dealer - M/s. Santhosh Timber and Furniture Works, Koyyalagudem. The 1st respondent has issued the impugned notice dated 09.06.2004 in Form-V, under the provisions of A.P. Revenue Recovery Act, 1864, which was published in West Godavari District Gazette on 12.06.2004, attaching the property of the petitioners on the ground that late Sri Seetharamaiah stood as surety to Sri M. Rambabu, Proprietor of M/s. Santhosh Timber and Furniture Works, Koyyalagudem, who fell in arrears of sales tax to a tune of Rs.3,68,932/- for the assessment years 1995-96, 1996-97 and 1997-98 under the provisions of the Act. The Department, having failed to recover tax from the assessee, has proceeded to recover tax from the secured assets of late Sri Seetharamaiah and initiated proceedings under the provisions of Revenue Recovery Act, based on the alleged surety bond executed by him at the time of issuing Registration Certificate to the dealer. Aggrieved by the same, the present writ petition is filed.

3. In the counter affidavit filed by the 1st respondent,

while denying various allegations made by the petitioners, it is stated that M/s. Santhosh Timber and Furniture Works, Koyyalagudem, fell in arrears of Rs.3,68,932/- towards sales tax and in view of the surety bond executed by late Sri Seetharamaiah, the respondents are entitled to recover the said amount by proceeding against the assets, which are subject matter of surety. It is stated that even if the subject property is settled by late Sri Seetharamaiah during his life time in favour of the petitioners, being his legal heirs, the petitioners cannot avoid their liability created by late Sri Seetharamaiah by executing a surety bond. In the counter affidavit, it is specifically stated that Form-IV notice under the Revenue Recovery Act was served on the dealer - Sri M. Rambabu and Smt. S. Narayanamma, the 1st petitioner herein, on 21.12.2003 and 20.3.2004, respectively, and thereafter Form-V Notice was issued on 9.6.2004, which was published in West Godavari District Gazette on 12.6.2004.

4. Mainly, it is the contention of the learned counsel for petitioners that there was no proper surety bond executed by late Sri Seetharamaiah and after his death, in any event, such a surety cannot be enforced against the property, which is settled in favour of the petitioners by late Sri Seetharamaiah during his life time. The learned counsel would contend that the impugned notice is not

preceded by Form-IV notice as contemplated under the provisions of Revenue Recovery Act. He would further contend that as the surety bond was obtained under the provisions of Rule 28 of the A.P. General Sales Tax Rules, 1957, even assuming that such a bond is executed by late Sri Seetharamaiah, under sub-rule (8) of Rule 28 of the Rules, the liability of late Sri Seetharamaiah is only to the extent of the estimated turnover for one year mentioned at the time of issuing the Registration Certificate in favour of the dealer, but not for the entire amount of tax defaulted by the dealer.

5. In support of his contention, learned counsel for the petitioners has relied on a judgment of this Court in R. DANDAYUDHAPANI, GUNTUR Vs. COMMERCIAL TAX OFFICER, LALAPET, GUNTUR & OTHERS[1].

6. Having heard learned counsel for the petitioners, we have perused the impugned notice dated 9.6.2004 and Rule 28(8) and (9) of the Rules.

7. For better appreciation, we deem it appropriate to refer the provisions of sub-rules (8) and (9) of Rule 28 of A.P. General Sales Tax Rules, 1957, which read as under:

"**28. REGISTRATION :**

(1) to (7) ……………….

(8) The registering authority may require an applicant for

registration to furnish within such time as may be specified by such authority security not exceeding an amount equal to tax payable under this at for a year as estimated by him, for the proper realisation of the tax and other dues payable under this Act and/or for the proper custody and use of the forms referred to in the Act, the rules made and the notification issued thereunder.

(9) The security referred to in sub-rule (8) may be in any of the following forms, namely:--

(a) Deposit in Government Treasury by cash.
(b) Government promissory notes, loan bonds, post office savings bank deposits, National Savings Certificates, deposits made in the scheduled banks of Andhra Pradesh State Cooperative Bank or Central Cooperative Bank duly pledged to the registering authority.
(c) Surety bond.
(d) Guarantee from a Scheduled Bank agreeing to pay to the State Government on demand the amount of security fixed by the registering authority.
(e) Immovable property."

8. From a perusal of the provision under Rule 28 (8) of A.P. General Sales Tax Rules, 1957, it is clear that the surety bond is to be obtained only for the purpose of securing tax on the estimated turnover for one year as mentioned in the Registration Certificate at the time of registration, but not for the entire arrears of tax or other dues defaulted by the assessee.

9. Further, from a perusal of the judgment in the case of R. DANDAYUDHAPANI (supra), it is clear that the said judgment was rendered by placing reliance on earlier judgments of this Court in the case of GULLAPUDI SOMESWARA RAO Vs. THE COMMISSIONER OF

COMMERCIAL TAXES, GOVERNMENT OF A.P. AND OTHERS, vide judgment in W.P.No.17017 of 2002, dated 12.04.2005, and NEW KAMAL BAR & CAFÉ, HYDERABAD Vs. STATE OF ANDHRA PRADESH AND OTHERS – (2006) 42 APSTJ 77.

10. In the case of GULLAPUDI SOMESWARA RAO, a Division Bench of this Court has held that the notice issued to the petitioner basing on the surety bond to realize the entire tax arrears was impermissible under law. In the case of NEW KAMAL BAR & CAFÉ, another Division Bench of this Court has held that the surety given by a person on behalf of the assessee would remain in force against the tax payable for a year as estimated by the assessee.

11. As the respondents have issued the impugned notice for recovery of entire arrears of tax due by the assessee, we set aside the impugned notice dated 9.6.2004 and direct the petitioners to pay sales tax on the estimated turnover for one year as mentioned in the Registration Certificate of the dealer at the time of registration, within a period of six weeks from today. However, it is made clear that if such tax is not paid by the petitioners, it is open for the respondents to recover such tax by following the procedure as contemplated under law.

12. Subject to the above directions, this writ petition

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

JUSTICE R. SUBHASH REDDY

Dr. JUSTICE B.SIVA SANKARA RAO

10.03.2015.
Msr

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[1] (2014) 59 APSTJ 130 (HC-TELANGANA & A.P.)