

THE HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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WRIT PETITION No. 24055 of 2015

ORDER: (per GC, J)

The petitioner challenges the Notice in Form 610, dated 08.07.2015 issued by the Deputy Commercial Tax Officer (for short, 'the DCTO').

2. Heard learned counsel for the petitioner and the learned Government Pleader.

3. It is the case of the petitioner that the DCTO, Kanchikacherla Unit, does not have jurisdiction to collect the tax, penalty and the compounding fees.

4. On the other hand, learned Government Pleader submits that in view of Section 57 read with Rule 16, the DCTO is authorised to pass appropriate orders. At any rate, it is the petitioner himself, without raising objection, had paid the tax, penalty and compounding fees.

5. What has been challenged before us is the Notice of Detaining Goods issued under Rule 56(1)(a) of the AP VAT Rules, 2005. In the detaining notice itself, opportunity has been given to the petitioner to reply to the notice arranging the discharge of tax and other amounts under the provisions of the Act, for the alleged violation. We may notice that in the notice what has been referred to is Sub-Section 6 of Section 49 of AP VAT Act, 2005 read with Rule 56 of the AP VAT Rules, 2005. In fact, there is no Sub-Section 6 under Section 49 in

the AP VAT Act, as Section 49 contains only three Sub-Sections. Obviously, the same is a mistake which requires to be corrected in the Forms. Hence, the reference is to Sub-Section 6 under Section 45 which is obvious from the very reading of Rule 56. As the petitioner had approached without filing his reply, we are not inclined to entertain the writ petition, as the fundamental rule of mandamus that the petitioner who seeks relief by way of issuance of Mandamus is first required to approach the authorities concerned by pointing out what is required to be done in accordance with law, is not complied with, inasmuch as this aspect is settled by the judgment of the Hon'ble Supreme Court in **Saraswati Industrial Syndicate Ltd. etc., Appellants v. Union of India, Respondent**. The Supreme Court in **Saraswati (1 supra)** held at paragraphs 24 and 25 as under:

“24. ...The powers of the High Court under Article 226 are not strictly confined to the limits to which proceedings for prerogative writs are subject in English practice. Nevertheless, the well-recognised rule that no writ or order in the nature of a Mandamus would issue when there is no failure to perform a mandatory duty applies in this country as well. Even in cases of alleged breaches of mandatory duties, the salutary general rule, which is subject to certain exceptions, applied by us, as it is in England, when a writ of Mandamus is asked for, could be stated as we find it set out in Halsbury's Laws of England (3rd edition, Vol.13, p. 106);

“As a general rule the order will not be granted unless the party complained of has known what it was he was required to do, so that he had the means of considering whether or not he should comply and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce, and that that demand was met by a refusal.”

25. In the cases before us there was no such demand or refusal. Thus, no ground whatsoever is shown here for the issue of any writ, order, or direction under Article 226 of the Constitution.....”

In that view of the matter, the writ petition is not maintainable.

6. Hence, the writ petition is dismissed. However, liberty is given to the petitioner to file his objections which he seeks to raise, including the one which is raised before us with regard to jurisdiction of DCTO.

As and when such objections are filed by the petitioner, the same shall be considered and disposed of by the authorities, in accordance with law, within eight weeks from the date of filing of objections by the petitioner. No costs. Miscellaneous petitions, if any pending, shall stand closed.

G. CHANDRAIAH, J

CHALLA KODANDA RAM, J

11th September, 2015

Note: Issue C.C. in three days

B/o

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