THE HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT PETITION No.14676 OF 2013

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

This Writ Petition is filed questioning the validity of the order, dated 05.03.2013, passed in Ref.No.A1/85/2012, by the Deputy Commissioner (Commercial Taxes), Chittoor – respondent No.1 and the consequential order, dated 15.03.2013, passed by respondent No.2.

Petitioner is a registered dealer under the provisions of Andhra Pradesh Value Added Tax Act, 2005 (for short, 'APVAT Act'), on the rolls of respondent No.2 and is engaged in the business of works contract. Accounts of the petitioner for the tax period from April, 2005 to July, 2009 were audited by respondent No.3 and pursuant to the same, the assessment order, dated 30.11.2009, was passed levying under declared tax at Rs.5,32,392/-. To verify the correctness and completeness of the said order, connected assessment record was called for and examined by respondent No.1, and show-cause notice, dated 02.03.2012, was issued proposing revision of the assessment order, by treating entire works contract as supply contract, which attracts tax under Section 4 (1) of the APVAT Act at 12.5%. In response to the same, petitioner has filed its objections. On examination of the objections, the proposal to levy tax at 12.5% was dropped. However, on close examination of the assessment order, with reference to Form VAT 250 filed by the petitioner, it was revealed that while finalising the assessment, the assessing authority has accepted payment of tax at 4% along with returns filed in Form VAT 250, option for payment of tax under composition scheme, but the petitioner did not exercise such option before commencement of the work. Hence, a revised show-cause notice was issued. Having heard the petitioner, respondent No.1 has passed the impugned order, dated 05.03.2013 assessing the under declared output tax at Rs.94,94,451/-. Consequently, respondent No.2 has passed order, dated 15.03.2013, levying tax of Rs.94,94,451/-.

It is submitted by the learned counsel for petitioner that after receiving objections in response to the notice, dated 02.03.2012, once the proceedings are dropped, respondent No.1 is not having authority to revise the notice and pass impugned order, dated 05.03.2013. It is further submitted that even if the works contract is considered as 'deemed sale', it attracts tax at 4.0%, but not at 12.5% as alleged. It is further submitted that respondent No.3 is not authorised specifically by respondent No.1 for assessing the petitioner and in support of the same, he has placed reliance on a judgment of this Court in **Balaji Flour Mills, Chittoor v.**

Commercial Tax Officer II, Chittoor[1], wherein, this Court has held that after issuing authorisation for conducting audit, a separate authorisation is to be given for the purpose of assessing the dealer.

On the other hand, it is submitted by the learned counsel for respondents that inasmuch as no order is passed dropping the proceedings pursuant to the notice, dated 02.03.2012, and in view of the revised show-cause notice, respondent No.3 is having authority and he has rightly exercised the jurisdiction while passing the impugned order, dated 05.03.2013.

It is not in dispute that the petitioner has not exercised the option for payment of tax under composition scheme before executing the works contract. Hence, the petitioner is liable to pay tax at 12.5%. However, with regard to various grounds raised by the petitioner, it is fairly submitted by the learned counsel for respondents that the authorisation was given only for the purpose of audit and no separate authorisation was given for assessing the petitioner.

As no specific authorisation is given to respondent No.3 for the purpose of assessing the petitioner, in view of the judgment of this Court in **Balaji Flour Mills** case (supra), we are of the view that the impugned order, dated 05.03.2013, and the consequential order, dated

15.03.2013, are liable to be set aside.

Accordingly, the appeal is allowed. The impugned order, dated 05.03.2013, and the consequential order, dated 15.03.2013, are set aside. It is left open to the respondents to initiate fresh proceedings after obtaining necessary authorisation from the competent authority. With regard to the quantum of tax and other grounds urged by the petitioner, it is open to the petitioner to raise such grounds after fresh proceedings are initiated by the respondents. However, it is made clear that this order will not preclude respondent No.3 from obtaining appropriate authorisation to pass fresh orders in accordance with law. It is also made clear that with regard to other grounds raised by the petitioner, this Court has not expressed any opinion and it is open to the assessing authority to consider the same and pass appropriate orders.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. No costs.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

March 02, 2015
MD

[1] (2011) 52 APSTJ 85