HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.25309 OF 2015

ORDER:- (per Hon'ble Sri Justice G.Chandraiah)

The Writ Petition is filed seeking Writ of Mandamus, declaring the action of the 4^{th} respondent in passing the Penalty Notice in 203A, dated 20.07.2015, demanding to pay the penalty under Section 43 of AP VAT Act, 2005 (in short "the VAT Act") and consequential order dated 30.05.2015 directing the petitioner to pay the outstanding taxes for an amount of Rs.54,91,375/- for the years 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 respectively is illegal, arbitrary, capricious and unlawful and against the principles of natural justice and without giving any opportunity and without serving any show cause notice to the petitioner and consequently set aside the same.

The case of the petitioner is that he is doing business of quarry lease after obtaining the quarry lease from the Government of Andhra Pradesh and after obtaining the same the petitioner entered into an agreement dated 13.12.2013 with Srinivasa Mines and Minerals, represented by one P. Srinivas Raju for doing mining work and to pay all the requisite taxes to the Government by the said quarry lease and also both the parties agreed to share profit or loss after deducting all costs involved in production. Basing on the said agreement the Srinivasa Mines and Minerals represented by its proprietor is paying the entire taxes regularly. While so, the petitioner was issued a show cause notice dated 30.03.2015, but on the ground that the said notice was returned unserved, a copy of the said show cause notice was affixed at the place of the petitioner and subsequently passed assessment order, vide proceedings dated 30.05.2015, levying a total tax of Rs.54,91,375/- and later issued the impugned notice proposing to pay the said penalty amount. Opposing the same, the present writ petition is filed.

Learned counsel for the petitioner submitted that he is not a registered dealer under the VAT Act and he is continuing the business in quarry in partnership with one Srinivasa Mines and Minerals, represented by its proprietor by name P. Srinivas Raju and as per the agreement between them the said company is used to pay all the taxes due to the Government and accordingly paid. Therefore, he is not liable to pay any taxes to the Government. It is submitted that since he was not given an opportunity to file the relevant document before the authorities, he filed the entire material before this Court to show that all the relevant taxes have been paid by the Srinivasa Mines and Minerals.

On the other hand, learned Government Pleader submits that when a notice was issued to the petitioner on 30.05.2015, the same was returned unserved and thereafter the notice was affixed at the relevant places of the petitioner, therefore, it cannot be said that the petitioner was not given any notice and opportunity. However, he states that it is an *ex parte* order. Since it is an *ex parte* order, it amounts an order passed without opportunity to the petitioner. In that view of the matter, the penalty notice in 203A dated 20.07.2015 is set aside and the matter is remanded back to the authorities to pass orders afresh in accordance with law by giving opportunity to the petitioner.

Accordingly, the respondent authorities are directed to issue notice to the petitioner within two weeks from the date of receipt of this order and within two weeks thereafter, after receipt of the notice issued by the respondent authorities, the petitioner shall submit his objections, if any, and within two weeks thereafter the respondent authorities shall pass orders after due notice to the petitioner.

In the result, the Writ Petition is allowed. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this Writ Petition, shall stand closed.

G. CHANDRAIAH, J

CHALLA KODANDA RAM, J

Date:18.08.2014.
ssv