HON'BLE SRI JUSTICE G.CHANDRAIAH

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HON'BLE SRI JUSTICE CHALLA KODANDA RAM

W.P.NO.15972 OF 2015

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

The writ petition is filed questioning the assessment order dated 23.05.2014 made by the 1st respondent.

The petitioner is a manufacturer of chemicals, which are used in pharmaceutical industry. The petitioner was given a show cause notice under APVAT Act for the period from December, 2010 to September, 2013. The petitioner filed objections before the first respondent and after considering the objections filed by the petitioner and after granting a hearing to the petitioner on 16.04.2014 and 03.05.2014 final assessment order dated 23.05.2014 came to be passed determining the tax due to the department as Rs.1,52,12,006/-.

Learned counsel for the petitioner fairly submits that in normal circumstances, the petitioner ought to have availed the remedy of appeal, but on account of the fact that the petitioner's factory came to be closed, assessment order is not served on the factory, and hence, the petitioner could not avail the remedy of appeal. However, learned counsel for the petitioner submits that the order of assessment is liable to be set aside and the matter be remanded back to the assessing authority on the ground of violation of principles of natural justice and also on the ground of non consideration of large amount of material placed before the Assessing Officer. The petitioner also submits that in the demand, the component of service tax to a tune of Rs.74,16,000/- also has been added, though the same is not liable to be brought under tax. Learned counsel further submits that initially the matter was put up for hearing on 16.04.2014 and 03.05.2014 and a request was made to the Assessing

Authority to grant time up to 20th May, 2014 for filing reconciliation of sale and purchase invoices to the CTO and there was a delay in obtaining the said files from the assessing office and on account of the same, the petitioner addressed a letter on 20.05.2014 seeking 10 more days time to enable them to submit files along with sales and purchase invoices. The said request was made through e-mail addressed by the Director, V.Ramakrishna to the CTO. The letter dated 20.05.2014 was also placed on record, wherein it has been stated that the petitioner sought 10 days time to arrange all equipment purchase invoices and match them with items given in Annexure I and II.

On the other hand, Sri J.Anil Kumar, Senior Standing Counsel for the Commercial Tax Department supported the order impugned and submitted that the petitioner having failed to avail the remedy of appeal could not have invoked the extraordinary jurisdiction under Article 226 of the Constitution of India assailing the order of assessment. Learned counsel also by drawing attention of the Court to the impugned order, would submit that the objections raised by the petitioner are in extracted verbatim and in that view of the matter learned counsel submits that it cannot be said that there is no application of mind on the part of the Assessing Officer and the allegation of the petitioner having not been given opportunity of hearing is contrary to the material on record.

We have heard both sides and perused the record.

Page 4 of the order dated 23.05.2014 records that a request was made by the petitioner to adjourn the case up to 20.05.2015 for submission of data of reconciliation of sale and purchase invoices against the proposed levy of tax and sale of assets of Rs.99,22,108/-. This mail was sent on 16.05.2014 and subsequent letter was addressed by the petitioner on 20.05.2014 seeking further time of 10 days. The impugned order came to be passed three days later. In the circumstances, it cannot be said that the petitioner had a fair opportunity of submitting the records justifying their stand that how they are not liable to pay the demanded tax in the show cause notice. Further a close reading of the order does not indicate any discussion having been made with respect to various aspects in the reply submitted to the show cause notice except extracting the objections raised by the petitioner to their letters dated 01.04.2014 and 05.05.2014.

It is needless to mention that even appeal is to be filed, the subject matter of the appeal could only be the reasoning why the contentions raised by the petitioner are acceptable or not acceptable. In that view of the matter, we are satisfied that the impugned order is liable to be set aside for violation of not granting adequate opportunity thus violating principles of natural justice giving liberty to the respondent authorities to make a fresh assessment after giving adequate opportunity to the petitioner. However, considering the fact that the petitioner approached this Court after long lapse of time and failed to avail the remedy of appeal, we deem it appropriate to set aside the order by imposing a condition of petitioner depositing a sum of Rs.60,00,000/- within a period of three months in two equal installments, first installment to be paid on or before 25th July, 2015 and the second installment before the end of the third month. It is also made clear that in case of default in payment of the amount, this order stands vacated without reference to the Court.

It is submitted by the learned counsel for the petitioner that a sum of Rs.6,96,000/- was recovered by the authorities by issuing garnishee proceedings. Subject to verification of the said amount, the petitioner shall be given credit for the said amount and the balance amount shall be paid within stipulated time.

The reassessment proceedings shall be taken up on petitioner paying first installment and the same shall be completed within three months from the date of receipt of the order.

With the above directions, the writ petition is disposed of. There shall be no order as to costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand closed.

G. CHANDRAIAH, J

CHALLA KONDA RAM, J

18.06.2014
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DATE: 18.06.2015

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