HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.4233 of 2006

-

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

This writ petition is filed by the petitioner seeking *Mandamus* declaring the action of the respondent-Commercial Tax Officer, Saroornagar Circle, Hyderabad, in passing the impugned order dated 27.1.2006 in Form VAT-305, demanding an amount of Rs.91,201/- towards tax, penalty and interest in the same proceedings, as arbitrary and illegal.

2. The petitioner is a Partnership Firm engaged in the business of execution of works contracts and is registered as a dealer on the rolls of the Commercial Tax Officer, Saroornagar Circle, Hyderabad, under the provisions of A.P. VAT Act, 2005. For the months of April and December, 2005, the respondent has issued a notice in Form VAT 305-A, dated 20.1.2006, alleging that on examination of records, it is revealed that the correct amounts of Value Added Tax have not been declared by the petitioner in the VAT returns and consequently proposed to levy tax at Rs.38,906/- for April, 2005 and Rs.5,333/- for December, 2005 and an equal sum towards penalty for the said period along with interest at Rs.2,723/-, thus determining the total amount payable by the petitioner at Rs.91,201/-. Though the petitioner has filed objections, the respondent has issued the impugned order dated 27.1.2006, confirming the earlier proposal demanding an amount of Rs.91,201/- towards tax, penalty and interest in the very same proceedings.

3. While admitting the writ petition, this Court, by order dated 6.3.2006, stayed recovery of penalty and interest on condition of the petitioner paying tax. Though the writ petition is of the year 2006, no counter affidavit is filed by the respondent.

4. Learned counsel for the petitioner submits that under the scheme of A.P. VAT Act, 2005, the respondent cannot levy tax, penalty and interest by a common order. In support of his contention, the learned counsel relied on a judgment of this Court in DELTA LUBRICANTS, VIJAYAWADA Vs. THE DCTO, No.1, SURYARAOPET CIRCLE, VIJAYAWADA (APHC), wherein this Court has set aside the impugned order only on the ground that the tax, penalty and interest cannot be imposed in the very same proceedings.

5. In the instant case also, a perusal of the impugned order dated 27.1.2006 shows that even in Form-305 notice, apart from proposing to levy tax, an equal sum was sought to be levied towards penalty, besides interest at Rs.2,723/-.

6. From a perusal of the aforesaid judgment, it is clear that unless there is a finding recorded that there is fraud or willful negligence in payment of tax, proceedings cannot be initiated under Section 53(3) of the A.P. VAT Act.

7. In view of the above, following the judgment in the case of DELTA LUBRICANTS, the impugned order dated 27.1.2006 to the extent of imposing penalty and interest, is hereby quashed. However, it is open to the respondent to recover penalty and interest by following the procedure contemplated under law.

8. Subject to the above directions, this writ petition is partly allowed. 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

21.04.2015.

Msr

HON'BLE SRI JUSTICE R.SUBHASH REDDY

AND

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.4233 of 2006

21.04.2015

Msr

21.04.2015

Msr