THE HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
THE HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.40178 OF 2014

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

This Writ Petition is filed seeking to direct the respondents either to give credit, the TDS amount of Rs.1,11,28,150/- relating to the assessment year 2011 – 12 or to refund the said amount to the petitioner.

Petitioner is a registered dealer under the provisions of Andhra Pradesh Value Added Tax Act, 2005 (for short, 'APVAT Act'), on the rolls of Commercial Tax Officer, Khairatabad Circle. For the assessment year 2011 – 12, petitioner claimed credit of an amount of Rs.1,11,28,150/- covered by TDS Certificates, but on the ground that the TDS Certificates were not available at the time of assessing tax for the tax period 2011 – 12, petitioner was not extended the credit and as per the orders of the assessing authority, entire tax was paid. Thereafter, the matter was carried in appeals and pursuant to the remand orders passed by the Appellate Deputy Commissioner and Sales Tax Appellate Tribunal, further orders were passed by the assessing authority, but it is not in dispute that the amount covered by TDS Certificates was not given credit for the assessment year

2011 - 12.

Even though the petitioner made a request to give credit of the amount covered by TDS Certificates in the returns filed for the assessment year 2012 – 13, it is stated that the amount was not given credit even for the assessment year 2012 – 13.

Respondents have filed counter affidavits.

From a perusal of the counter affidavits, it is clear that the credit was not given for the assessment year 2011 – 12 only on the ground that the TDS Certificates were secured by the petitioner after assessment proceedings were finalised and completed, but at the same time, in view of the TDS Certificates, the amount covered by such Certificates ought to have been refunded. The petitioner allegedly, on the oral instructions of the officers, has claimed adjustment for the assessment year 2012 – 13, but the same was not given credit.

Inasmuch as there is no averment in the counter affidavits that any arrears are payable by the petitioner for the assessment years
2011 – 12 and 2012 – 13, it appears that there is no reason for not refunding the amount covered by the TDS Certificates.

For the aforesaid reasons, we deem it appropriate to dispose of the Writ Petition directing the respondents to verify whether any arrears are payable by the petitioner for the subsequent periods and after adjusting such arrears, refund the amount covered by TDS Certificates along with interest, as provided under Section 39 (2) of APVAT Act. The refund shall be made within a period of two (2) months from today.

Subject to the above, the Writ Petition is disposed of. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. No costs.

R. SUBHASH REDDY, J

Dr. B. SIVA SANKARA RAO, J

March 17, 2015

MD