HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.14 of 2006

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

This writ petition is filed by the petitioner questioning the proceedings No.Int/20/2005, dated 25.11.2005, issued by the Commercial Tax Officer, Osmangunj Circle, Hyderabad, compounding the offence under Section 61 of the A.P. VAT Act, 2005 by collecting an amount of Rs.40,373/- towards tax, and further proceedings No.Int/20/2005, dated 25.11.2005, issued by the very same authority, imposing penalty of Rs.40,373/-.

2 . The petitioner is engaged in the business of Wholesale General Merchant and Commission Agent and is registered as a dealer on the rolls of the Commercial Tax Officer, Osmangunj Circle, Hyderabad, under the provisions of A.P. VAT Act, 2005 (for brevity "the Act") and the Central Sales Tax Act, 1956. In terms of Section 20 of the Act, the petitioner has filed returns in Form VAT-200 for the months of April to October, 2005, disclosing the sales claim of input tax credit and the tax payable after adjusting the input tax credit. In the course of auditing the business premises of the petitioner by the respondent on 8.11.2005, it was found that unaccounted slips numbering to 20 of stock inventory were available with the dealer for the year 2005-06, resulting in suppression of sales turnover of Rs.6,39,504/-, besides deficit stock of Rs.3,69,820/-. Basing on the same, when the respondent has decided to levy tax assessing the turnovers under the provisions of the Act, pursuant to the show cause notice dated 14.11.2005, the petitioner sought to compound the

offence by filing a reply. In view of such reply filed by the petitioner, the respondent has issued the impugned order dated 25.11.2005 compounding the offence under Section 61 of the Act, and consequently imposed penalty, which is equivalent to the tax amount, vide proceedings dated 25.11.2005. The grievance of the petitioner is that such proceedings are issued and the petitioner is forced to sign the said proceedings accepting the offences under threat and coercion.

3. Counter affidavit is filed by the respondent disputing the averments in the writ petition. In para-7 of the counter affidavit, it was categorically denied the allegation that the petitioner was forced to accept the offences under threat and coercion.

4. Learned counsel for the petitioner submits that in any event, the penalty order ought not to have been issued without passing any assessment order.

5. It is to be seen that on initiation of proceedings under Section 53 of the Act, pursuant to the show cause notice dated 14.11.2005, the petitioner has already filed a reply accepting to pay the tax and penalty. Though it is pleaded by the petitioner that such acceptance is by force and coercion, the same is denied by the respondent in the counter affidavit.

6. In view of the averments in the counter affidavit filed by the respondent, we do not find any illegality so as to interfere with the impugned orders.

7. For the aforesaid reasons, this writ petition is devoid of merits and is accordingly dismissed. 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

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