IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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WRIT PETITION No. 22807 of 2015

Between:

M/s Tirupati Fuels Private Limited, Visakhapatnam.

… Petitioner

and

Commerical Tax Officer, Visakhapatnam, and another.

… Respondents

DATE OF JUDGMENT PRONOUNCED: 27.07.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

1	Whether Reporters of Local newspapers may be allowed to see the Judgment?	Yes / No
2	Whether the copies of judgment may be marked to Law Reports/Journals	Yes / No
3	Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?	Yes / No

THE HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

<u>ORDER</u>:- (per Hon'ble Sri Justice G. Chandraiah)

The writ petitioner-M/s Tirupati Fuels Private Limited, Visakhapatnam, questions the action of the respondents in not issuing the way bills and 'C' declaration forms.

2. The facts of the case, in brief, are that the petitioner is a private limited company engaged in the business of manufacture and sale of Coke, and is a registered dealer on the rolls of the 1st respondent. During the course of business, the petitioner purchased raw material such as Coal and other material both from within and outside the State of A.P., and also by way of import from outside the territory of India. The petitioner filed returns both under the A.P. VAT Act as well as CST Act and also paid applicable taxes. Due to adverse business conditions, it incurred loss and its operations came to a stand still, due to which it also suffered attrition; and that new management has taken over and the organisation is under revival. While so, assessments under the CST Act for the period 2007-08, 2008-09 and 2009-10 were made by the Commercial Tax Officer, China Waltair Circle, levying tax on the inter-State sales. Though it was on record that the inter-State sale transactions were already assessed separately under the CST Act, the assessing authority, without verifying the same, included the inter-State sales turnover in the Assessment Order dated 29.03.2014 passed under the AP VAT Act, 2005. The effect of such an assessment is that a portion of the petitioner's turnover is subjected to tax both

under the CST Act and also the AP VAT Act. Questioning the assessment order dated 29.03.2014, W.P.No.6203 of 2015 was filed before this Court, wherein this Court granted stay subject to payment of 50% of tax. The petitioner could not comply with the said conditional order due to financial hardship. While things stood thus, it is stated that the respondents blocked the online transactions of the petitioner due to which the petitioner could not obtain the way bills and 'C' declaration forms though the petitioner made an online application on the Departmental Website. Assailing the action of respondents in not issuing the way bills and 'C' declaration forms, the petitioner is before this Court with this writ petition.

3. Heard learned counsel for the petitioner and the learned Special Government Pleader.

4. Learned counsel for the petitioner submits that the matter is covered by the judgment of this Court in W.P.No.39097 of 2013.

5. This Court, by order dated 12.03.2014, while allowing W.P.No.39097 of 2013, by referring to the judgment of this Court in **Sri Kamadhenu Khadi and Village Industries Welfare Society, Kolluru v. Commerical Tax Officer, Tenali**[1], and also the judgment of the Hon'ble Supreme Court in **M/s Dabur India Limited v. State of U.P.**[2], observed as under:

> **"9. The learned Special Government Pleader has not brought to our notice any**

> **provision in the VAT Act or the C.S.T. Act, 1956, which empowers denial of 'C' declaration forms to the petitioner.**
>
> **Thus, in view of the principles laid down by this Court in the decisions cited *supra,* the writ petition is allowed directing the respondents to supply the 'C' form declarations. However, this order does not preclude the respondents from initiating appropriate proceedings for recovery of tax arrears, if any."**

5. In that view of the matter, this writ petition is also allowed in terms of the order dated 12.03.2014 in W.P.No.39097 of 2013. No costs. Miscellaneous petitions, if any pending in this writ petition, shall stand closed.

G. CHANDRAIAH, J

CHALLA KODANDA RAM, J

27th July, 2015

Note: Issue C.C. in three days.
B/o
ksm

HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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[1] (1996) 23 APSTJ 141

[2] AIR 1990 Supreme Court 1814