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

WRIT PETITION No.19676 of 2014

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

This writ petition is filed by the petitioner seeking *Mandamus* to declare the impugned assessment order in TIN:28860176544/ 2007-08 (CST), dated 01.02.2011 passed by the 1st respondent for the assessment year 2007-08 under the Central Sales Tax Act, 2005, as arbitrary, illegal and without any authorization obtained from the competent authority.

2. The petitioner is a registered dealer on the rolls of 1st respondent-Commercial Tax Officer-II, Proddatur, Kadapa District, under the provisions of A.P. Value Added Tax Act, 2005 and also under the Central Sales Tax Act, 2005 and doing business in Oils. On the ground that the petitioner-assessee has not filed relevant information of consignment and inter-State sales effected during the assessment year 2007-08, impugned order dated 1.2.2011 is passed by the 1st respondent, showing the estimated turnover of Rs.40,00,000/- as the taxable turnover based on four Way Bills.

3. It is the case of the petitioner that the goods covered by the said four Way Bills were returned by the purchasers. It is also the grievance of the petitioner that

an amount of about Rs.57,000/- paid by it towards tax during the assessment period was not given credit to. Further, there is no specific authorization obtained from the competent authority to initiate proceedings under Rule 59(4) of the VAT Rules as per the judgment of this Court in SRI BALAJI FLOUR MILLS, CHITTOOR AND OTHERS vs. THE COMMERCIAL TAX OFFICER-II, CHITTOOR AND OTHERS[1].

4. Heard learned counsel for the petitioner as well as the learned Government Pleader for Commercial Taxes and also the learned Special Standing Counsel for Commercial Taxes.

5. A perusal of the impugned order dated 1.2.2011 shows that as the petitioner has not filed any objections, the estimated turnover based on four Way Bills was shown as Rs.40,00,000/-. It is the specific case of the petitioner that the said four Way Bills do not pertain to the sale of any goods and, as such, the estimated turnover is wrongly arrived at. So far as the amount of Rs.57,000/- is concerned, as the petitioner has not filed any objections, the same was not considered by the 1st respondent.

6. With regard to obtaining of valid authorization for assessment, though reliance is placed by the petitioner in the case of SRI BALAJI FLOUR MILLS (supra), it is to be noticed that in the very same judgment, it was clearly held that the jurisdiction to make assessment order would not automatically apply to an assessee under Central Sales

Tax Act, 2005. Therefore, it cannot be said that the impugned order is liable to be set aside on the ground that it does not preceded by any authorization as required under A.P. Value Added Tax Act, 2005.

7. However, as the petitioner was not given any opportunity to file objections with regard to the estimated turnover of Rs.40,00,000/- based on four Way Bills and further a sum of Rs.57,000/-, which was already paid by the petitioner towards tax, was not given credit to, we deem it appropriate that it is a fit case to remit the matter to the 1st respondent for fresh consideration and to pass appropriate orders.

8. Accordingly, impugned order dated 1.2.2011 shall be treated as show cause notice and the petitioner is permitted to file objections to the same within a period of six weeks from today. On filing such objections, the 1st respondent is directed to consider the same and pass appropriate orders in accordance with law. It is made clear that if objections are not filed by the petitioner within the stipulated time, it is open to the 1st respondent to proceed with the matter and pass appropriate orders in accordance with law.

9. Subject to the above directions, this writ petition is disposed of. 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

23.02.2015.

Msr

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

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[1] 52 STJ 85