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

WRIT PETITION No.34969 of 2014

ORDER : (Per Justice R. Subhash Reddy)

In this writ petition, the petitioner seeks Writ of Mandamus to declare the action of 2nd respondent in issuing the proceedings dated 09.05.2013, for assessment years from 2008-09 to 2010-11, as illegal, arbitrary and without jurisdiction and consequently seeks to set aside the rectification order of the 2nd respondent dated 08.09.2014.

The petitioner is a proprietary concern carrying on the business of hiring buses. It has hired a bus bearing No.AP-7-TW-9855 to the 3rd respondent-Andhra Pradesh State Road Transport Corporation, by entering into lease agreement. The petitioner has received a total amount of Rs.46,90,015/- towards lease amount during the years 2008-09, 2009-10 and 2010-11. Noticing receipt of such lease amount from the Andhra Pradesh State Road Transport Corporation, on the ground that it is taxable under the provisions of the A.P.Value Added Tax Act, 2005, the competent authority i.e. the Deputy Commercial Tax Officer (TOT), Mangalagiri, has issued a show cause notice dated 28.06.2012, for which, the petitioner has filed explanation on 11.09.2012, and after receipt of such explanation, the 2nd respondent has passed assessment order dated 09.05.2013 in Proceedings No.CTD.A.O.No.35069, determining the tax liability of petitioner at Rs.4,28,661/-.

Although the impugned order is challenged on several grounds, when the matter is called for hearing, it is contended by the learned counsel for petitioner that the 2nd respondent did not have valid authorization to pass the impugned order on the date of initiating the proceedings, as such, the order passed is illegal and is fit to be set aside on that ground alone. It is brought to the notice of this Court that the competent authority has issued authorization on 30.01.2013, whereas the 2nd respondent has initiated the proceedings for assessment by issuing the show cause notice on 28.06.2012, and thus, it is submitted that the proceedings initiated and order passed are fit to be set aside. In support of his contention, the learned counsel has placed reliance on the judgment of this Court in the case of **Radheshyam & Co., Hyderabad Vs. Assistant Commissioner (CT) VMU-II, Hyderabad & Others**[1]. The learned Government Pleader appearing for respondents 1 and 2 and also Sri K.Satyanarayana Murthy, learned Standing Counsel appearing for 3rd respondent-Road Transport Corporation have not disputed that 2nd respondent was granted authorization subsequent to issuance of show cause notice in the assessment proceedings.

In the judgment referred above, a Division Bench of this Court has held that as per Rule 59(1)(4) of the A.P.Value Added Tax Rules, 2005, the assessing authority is required to obtain separate authorization from the Territorial Deputy Commissioner for undertaking the assessment after conducting audit. It was specifically held that initiation of assessment proceedings by issuance of show cause notice and later obtaining authorization for completion of assessment is contrary to the aforesaid Rules and such order is without any authority of law.

From a perusal of the references cited in the impugned order dated 09.05.2013, it is clear that the notice for assessment was issued by the 2nd respondent even prior to his obtaining authorization from the Deputy Commissioner (CT), Guntur on 30.01.2013. The learned Government Pleader for Commercial Taxes does not dispute that the authorization was issued to the assessing authority subsequent to issuance of show cause notice dated 28.06.2012. In that view of the matter, the subject matter of this writ petition is covered to be allowed in terms of the judgment referred above.

Therefore, without going into merits of the impugned assessment order, on the sole ground that the show cause notice for assessment was issued even prior to obtaining authorization for initiation of assessment proceedings from the competent authority, we allow this writ petition setting aside the impugned order dated 09.05.2013 and remand the matter for fresh consideration by the 2nd respondent-Deputy Commercial Tax Officer, Mangalagiri, Guntur District. As a result, the consequential rectification order dated 08.09.2014, is also quashed. It is made clear that this Court has not expressed any opinion on the merits of the case. Further, in view of the authorization dated 30.01.2013, issued by the competent authority, it is open to the assessing authority to assess the tax after considering the objections raised by the petitioner.

Pending miscellaneous applications, if any, shall stand closed. No order as to costs.

R. SUBHASH REDDY, J

DR.B.SIVA SANKARA RAO, J

19th January 2015

Msr/ajr

---

[1] (2014) 59 APSTJ (APHC) 51