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

WRIT PETITION No.322 of 2010

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

The petitioner has fniled this writ petition questioning the proceedings RC.No.2186/01-02, dated 26.10.2009, issued by the 1st respondent-Commercial Tax Officer, Osmangunj Circle, Hyderabad, confirming its earlier assessment order dated 12.6.2003.

2. The petitioner is engaged in the commission business of garlic, ginger, onions and potatoes. It is a registered dealer under the provisions of the A.P. General Sales Tax Act, 1957 (for brevity "the Act") and is an assessee on the rolls of the 1st respondent-Commercial Tax Officer, Osmangunj Circle, Hyderabad. The assessment orders for the year 2001-02 were finalized by the Deputy Commercial Tax Officer on 25.7.2002 considering the turnovers of sales reported in the monthly returns filed as required under the Statute. Subsequently, on 18.10.2002, the Assistant Commissioner (CT), Charminar Division, inspected the business premises of the petitioner and verified the books of accounts with reference to a computer extract containing 64 transactions. On the ground that some of the transactions were not accounted for, the 1st respondent-Assessing

Authority has passed assessment orders dated 12.06.2003 for payment of balance tax payable by the petitioner at Rs.2,76,230/-. As against the same, the petitioner carried the matter by way of appeal before the 2nd respondent-Appellate Deputy Commissioner (CT), Punjagutta Division, Hyderabad, who in turn, allowed the appeal vide Appeal No.C/114/2004-05, dated 15.11.2006, the operative portion of which reads as under:

> "The ratio of the above decisions rendered by the Honourable Sales Tax Appellate Tribunal, as discussed above, squarely apply to the case on hand. Hence, in fitness of matters, I feel it just and proper to remit the matter back to the Revisional Authority who shall make further necessary enquiries in the matter and after gathering such evidence as it considers necessary and after affording an opportunity to the appellant to rebut the evidence etc., and pass such orders as deemed fit in accordance with the provisions of the Act. With this direction, the impugned assessment is set aside and the appeal remanded.
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> In effect, the appeal is remanded."

3. After remanding the matter as per the above directions, the impugned order dated 26.10.2009 is passed by the 1st respondent.

4. As per the directions of the 2nd respondent-Appellate Deputy Commissioner, Punjagutta Division, though the 1st respondent has addressed letters to the Sales Tax Officer, Auriya, Uttar Pradesh, he has not received any response with reference to the particulars sought for from such authority and hence, without further notice and opportunity of hearing to the petitioner, as directed by the 2nd respondent-Appellate Deputy

Commissioner, the impugned order is passed, without recording independent reasons and confirming the earlier orders by recording a finding that the period of limitation coming to an end.

5. Such order is challenged in this writ petition mainly on the ground that as the said order is not passed in compliance with the directions issued by the Appellate Deputy Commissioner, Punjagutta Division.

6. Heard learned counsel for the petitioner as well as the learned Special Standing Counsel for Commercial Taxes and perused the impugned order.

7. A perusal of the order dated 15.11.2006 passed by the appellate authority, shows that the 2nd respondent-Appellate Deputy Commissioner, Punjagutta Division, while setting aside the assessment order dated 12.6.2003, has directed the 1st respondent-Commercial Tax Officer, Osmangunj Circle, to make further necessary enquiries in the matter and after gathering such evidence as it considers necessary, pass appropriate fresh orders after affording an opportunity of hearing to the petitioner.

8. From a perusal of the impugned order dated 26.10.2009 passed by the 1st respondent, it is clear that the same is passed in violation of the directions issued by the 2nd respondent-Appellate Deputy Commissioner. Apart from that, when earlier orders dated 12.6.2003 were already set aside by the Appellate Deputy Commissioner, there is no reason in confirming such order without

assigning any valid and independent reason.

9. Therefore, in the absence of any valid reasons and as the impugned order is not in conformity with the directions issued by the 2^{nd} respondent-Appellate Deputy Commissioner, the same is liable to be set aside.

10. As it is stated that under Section 24-A of the Act, consequential orders have to be passed within a period of three years from the date of appellate order dated 15.11.2006, and as against the consequential order dated 26.10.2009, the petitioner has filed the present writ petition, we deem it appropriate to set aside the impugned order dated 26.10.2009 and the respondents are given liberty to pass fresh orders by complying with the directions issued by the 2^{nd} respondent-Appellate Deputy Commissioner, Punjagutta Division, after making necessary enquiries and gathering such evidence and also by giving notice and opportunity of hearing to the petitioner, within a period of three months from today.

11. The writ petition is allowed as indicated above. 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

28.04.2015.
Msr

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