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

WRIT PETITION No.2494 of 2015

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

This writ petition is filed questioning the validity of the orders of assessment, dated 02.03.2013, in AAO No.14422 in TIN No.28821447698, determining the tax liability of the petitioner-dealer at Rs.5,42,152/- under the provisions of the A.P. Value Added Tax Act, 2005, and also the order of penalty, dated 28.03.2013, demanding the petitioner to pay penalty of Rs.1,35,539/-, passed by the 2nd respondent-Commercial Tax Officer, No.1 Circle, Adoni, Kurnool District.

Apart from other grounds, the validity of the impugned orders is also questioned on the ground that the 2nd respondent did not have valid authorization to pass such orders on the date of initiation of assessment proceedings.

It is submitted by the learned counsel for petitioner that the authorization for assessment was issued to the 2nd respondent by the Deputy Commissioner (CT), Kurnool on 21.02.2013, whereas the 2nd respondent has initiated the proceedings for assessment by issuing the show cause notice of assessment in Form VAT 305 A on 11.09.2012 i.e., prior to obtaining authorization for initiation of assessment proceedings from the competent authority. 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 and Others**[1]**.** Learned counsel for the respondents has not disputed that the 2nd respondent was issued authorization subsequent to issuance of show cause notice of assessment dated 11.09.2012.

In the judgment referred to above, this Court has held that the assessing authority ought to have taken the authorization prior to issuance of show cause notice. The similar writ petition filed earlier, being W.P.No.34969 of 2014, was allowed by this Court, by order dated 19.01.2015, setting aside the impugned order therein and remanding the matter for fresh consideration. In view of the same and in view of the judgment in **Radheshyam's** case (1 supra), the impugned orders cannot be sustained for want of authorization before passing them.

Therefore, on the short ground that the show cause notice for assessment was issued prior to obtaining authorization for initiation of assessment proceedings from the competent authority, the writ petition is allowed, setting aside the impugned assessment order dated 02.03.2013 and the consequential penalty order, dated 28.03.2013. However, this will not preclude the assessing authority from taking up assessment proceedings afresh and passing orders in accordance with law.

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

09.02.2015
v v

[1] (2014) 59 APSTJ (APHC)