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

WRIT PETITION No.28616 of 2014

ORDER : (Per Justice R. Subhash Reddy)

In this writ petition, petitioner has questioned the revisional order dated 16.08.2014, passed by the 1st respondent in Rc.No.372/2013, A9.

2. Petitioner is an assessee under the provisions of the Andhra Pradesh Value Added Tax Act, 2005 and also under the Central Sales Tax Act, 1956 and is on the rolls of the 3rd respondent-Commercial Tax Officer, Gajuwaka Circle, Visakhapatnam. The Commercial Tax Officer, Dwarakanagar Circle, Visakhapatnam has conducted audit and assessed the petitioner/dealer for the period from 01.10.2008 to 31.03.2010 and consequently, proceedings dated 17.08.2010 were issued in VAT 305 by determining the under-declared tax of Rs.1,06,402/- for the tax period ending March 2009 and Rs.66,961/- for the tax period ending October 2009. Subsequently, the assessment records were verified and it is noticed that the petitioner/dealer has entered into agreement with M/s.Rashtriya Ispat Nigam Limited, Visakhapatnam (RINL) for design, manufacture and supply of indigenous plant, machinery and equipment for blast furnace. The petitioner/dealer has declared and paid tax through VAT-

200 returns on the value of goods procured locally and supplied to RINL. On the ground that the petitioner has failed to declare the value received in respect of designs and drawings and that the technical know-how and designs are taxable at the rate of 4% as per entry 2(VII & X) under Schedule-IV of A.P.VAT Act, 2005, revisional proceedings are initiated and the revisional show-cause notice dated 06.06.2013 is issued in Rc.No.372/2013 A9 by the Deputy Commissioner (CT), Visakhapatnam. By the aforesaid notice, the revisional authority has proposed to revise the assessment by levying tax under Section 32(2) of the A.P.VAT Act, 2005 read with Rule 50 of the A.P.VAT Rules, 2005 for the tax period from 01.10.2008 to 31.03.2010, as stated below:

"Tax on the turnover received
Towards Drawing and designing - Rs.3,87,00,000/- @ 4%

Rs.15,48,000/-

Tax on differential turnover
For the year 2009-10. - Rs.39,48,93,903/- @ 12.5%

Rs.4,93,61,739/-
(from 01.04.2009 to 14.01.2010)

Rs.17,66,72,269/- @ 14.5%

Rs.2,56,17,479/-
(from 15.01.2010 to 31.03.2010)

Total tax effect Rs.7,65,27,218-00"

In response to the said show-cause notice, petitioner has filed objections on 12.07.2013, 18.09.2013 and on 01.10.2013. Thereafter, the impugned order is passed by arriving at Rs.10,73,94,102/- as total tax under-assessed. While passing the final orders, the Deputy Commissioner (CT), Visakhapatnam has taken into account the tax on the turnover received towards drawing and designing and also on differential turnover of tax for the years 2008-09 and 2009-10.

3. In this writ petition, mainly, it is the case of the petitioner that the revisional orders passed are beyond the limitation period prescribed under law. It is alleged that though the order of 1st respondent is bearing the date as 16.08.2014, it was actually passed on 18.08.2014 since the order has been uploaded on the departmental website on 18.08.2014. Reliance is placed on the circular instructions issued by the Commissioner of Commercial Taxes in CCT's Ref.No.CS(1)/11/2014, dated 31.01.2014, wherein, instructions are given to the effect that all the departmental orders are required to be uploaded on the website with serial number and the date of the order must be the same date as date of uploading the order on departmental website. It is stated by the petitioner that the order number allotted to the revisional proceedings in this case is "79" and the departmental website shows that it is uploaded on 18.08.2014. It is also argued by the learned

counsel for petitioner that the turnovers which are not subject matters of show-cause notice, were also taken into account while assessing the tax payable by the petitioner. It is also the case of petitioner that the petitioner has designed several equipments and supplied the drawings required for the approval of RINL under the first agreement and has paid service tax in a sum of Rs.37,51,620/- on the value of Rs.3.87 crores and in respect of 2nd agreement, orders were placed on the vendors in the other States and across the country as per the drawings and goods were supplied from other States through the petitioner and delivered to RINL at their site, as such, transactions are conducted as transit sales under Section 6(2) read with Section 3(b) of the Central Sales Tax Act, and the petitioner has reported the turnover of such supply as inter-State sales before the VAT authorities in Delhi and claimed exemption against 'C' forms issued by RINL. It is further submitted that in respect of the goods which the petitioner has purchased locally, the transactions are reported as liable to A.P.VAT in the returns.

4. In the counter affidavit filed, while denying the various allegations made by the petitioner, it is stated that the revisional order is dated 16.08.2014 and merely because it is uploaded in the website on 18.08.2014, it cannot be said that the order is ante-dated. It is further

stated in the counter that uploading of orders into the departmental website is not a statutory prescription, but is only in compliance to the executive instructions of the Commissioner of Commercial Taxes. It is further stated that the revisional order was uploaded in the website on the immediate working day. It is also stated that the transactions are in the nature of intra-State sales leviable to sales tax under A.P.VAT Act, 2005 and not transit sales to claim exemption under Section 6(2) of the Central Sales Tax Act. It is further stated that the petitioner receives orders for design, manufacture and supply of indigenous plant, machinery and equipment for blast furnace No.3 by M/s.RINL and the petitioner in turn places order for supply of certain parts to the suppliers situated in other States by instructing them to dispatch the goods to M/s.RINL, which was pre-determined in nature and claimed by the petitioner as sale in transit under Section 3(b) read with Section 6(2) of the Central Sales Tax Act, as such, the contractor is taking delivery of goods and storing them in his site and the contractor is responsible for the goods until they are erected and handed over to the employer, hence, they cannot be treated as transit sales.

5. A perusal of the show-cause notice for the proposed revision of tax indicate the tax at Rs.7,65,27,218/- and the turnover for the assessment year 2008-09 was not the subject matter of said show-cause notice, whereas,

coming to the final orders, differential turnover for the assessment year 2008-09 is also taken into consideration and the tax arrived at is mentioned as Rs.10,73,94,102/-.

6. Though it is argued by the learned counsel for petitioner that the order is dated 16.08.2014 but it is uploaded on 18.08.2014, and as such, it is to be treated to have been passed beyond the period of limitation, we are not convinced to accept the same, and in view of the explanation offered in the counter for not uploading the order on the same day i.e. 16.08.2014, it cannot be said that the order is passed beyond the period of limitation. It is true that circular instructions are issued for uploading the orders in the website of Commercial Taxes Department, but in view of the explanation offered by the respondents in the show cause notice, it cannot be said that the order is barred by limitation. But having regard to the fact that the turnovers which are not subject matter of show-cause notice are considered while passing the final order and total tax under-assessed is arrived at taking such differential turnover for the assessment year 2008-09 also. In the case of **BGR Energy Systems Limited, Formerly Gea Energy System (India) Ltd. Vs. Assistant Commissioner, Commercial Taxes, Large Tax Payer Unit**[1], a Division Bench of this Court has held that in the show cause notice, if the authorities have not mentioned the turnovers which are sought to be taxed, final orders

passed pursuant to such show cause notice falls foul of audi alteram partem rule, as the petitioner has been denied the opportunity of effectively showing cause as to why such turnover is not liable to tax under VAT Act. Further, in view of the objections offered by the petitioner to the proposed revision and having regard to the fact that the final orders are passed beyond the scope of the show-cause notice itself, we are of the view that it is a fit case for reconsideration on merits, by the revisional authority/Deputy Commissioner (CT), Visakhapatnam.

7. For the aforesaid reasons, the order dated 16.08.2014, passed by the 1st respondent in Rc.No.372/2013, A9 and the consequential order dated 21.08.2014 passed by the 3rd respondent, are set aside and the matter is remitted back for fresh consideration on merits by the Deputy Commissioner (CT), Visakhapatnam, and to pass appropriate orders as expeditiously as possible, preferably within a period of two months from today. Further, it is made clear that the petitioner shall cooperate for inquiry without seeking further time and he shall appear before the Deputy Commissioner (CT), Visakhapatnam, on the date of hearing. Petitioner shall also submit a copy of this order before the Deputy Commissioner within a period of three weeks from today.

8. The writ petition is allowed subject to the directions

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

R. SUBHASH REDDY, J

DR. B. SIVA SANKARA RAO, J

25th March 2015

ajr

[1] (2009) 49 APSTJ 213