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

WRIT PETITION No.3167 of 2015

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

The petitioner is a Private Limited Company, carrying on business in purchase and sale of Maize, Turmeric etc. The petitioner is registered as a dealer under the provisions of A.P. VAT Act, 2005 (for brevity "the Act") and is an assessee on the rolls of the 1st respondent-Commercial Tax Officer, Musheerabad Circle, Secunderabad.

2. In this writ petition, the petitioner has questioned the validity of assessment order in Form VAT-305, dated 31.10.2014 issued by the 1st respondent for the assessment years 2011-12, 2012-13 and 2013-14 under the provisions of the Act, demanding to pay an amount of Rs.40,47,863/- towards tax.

3. The said order is challenged on several grounds, including the ground that the authority, who passed the assessment order, does not have specific authorization from the competent authority to undertake assessment after conducting the audit before initiation of proceedings.

4. It is contended by the learned counsel for

petitioner that the show cause notice dated 13.02.2014 was served on the petitioner on 8.7.2014, whereas the authorization from the competent authority i.e., Deputy Commissioner (CT), Secunderabad Division, for assessing the petitioner was obtained on 19.7.2014 i.e., subsequent to the issuance of show cause notice and the impugned order came to be passed on 31.10.2014. In support of his contention, the learned counsel placed reliance on a judgment of this Court in RADHESHYAM & CO., HYDERABAD vs. ASSISTANT COMMISSIONER (CT) VMU-II, HYDERABAD & OTHERS[1].

5. We have perused the judgment in the case of RADHESHYAM & CO. (supra), wherein a Division Bench of this Court has held that as per Rule 59(1)(4) of the APVAT Rules, 2005, the assessing authority is required to obtain a separate authorization from the territorial Deputy Commissioner for undertaking the assessment after conducting audit. It was specifically held that initiation of assessment proceedings by issuing a 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.

6. From a perusal of the impugned order dated 31.10.2014, it is clear that the show cause notice dated 13.02.2014 was issued even prior to obtaining of

authorization from the Deputy Commissioner (CT), Secunderabad, on 19.7.2014. The learned Special Standing Counsel for Commercial Taxes does not dispute that the authorization was issued subsequent to the issuance of show cause notice dated 13.2.2014. Therefore, in view of the judgment in the case of RADHESHYAM & CO. (supra), we are of the view that the subject matter in this writ petition is covered to be allowed.

7. In view of the above, without going into the merits of the impugned assessment order, following the judgment in the case of RADHESHYAM & CO. (supra), we allow this writ petition setting aside the impugned assessment order dated 31.10.2014 and the matter is remanded for consideration afresh by the 1st respondent-Commercial Tax Officer, Musheerabad Circle, Secunderabad. Further, in view of the authorization dated 19.7.2014 issued by the competent authority, it is open to the assessing authority to assess the tax and pass appropriate orders in accordance with law after considering the objections raised by the petitioner. 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
16.02.2015.
Msr

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

WRIT PETITION No.3167 of 2015

16.02.2015
Msr

---

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