THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

AND

THE HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.13409 of 2015

ORDER: (Per Justice R.Subhash Reddy)

This writ petition is filed questioning the proceedings dated 19.03.2015 in AAO.No.10325 issued by the assessing authority/2nd respondent herein, imposing penalty on the petitioner, in exercise of powers conferred under Section 53 of the A.P. VAT Act, 2005 (for short 'the VAT Act').

The petitioner is a registered dealer under the provisions of the VAT Act and is an assessee on the rolls of the 2nd respondent. For the tax period from July, 2012 to January, 2014, the assessing authority has passed the assessment order dated 08.08.2014 in Form VAT 305, raising a demand of Rs.2,07,50,929/- towards the tax due for the said period. Questioning the same, the petitioner has preferred an appeal before the Appellate Deputy Commissioner (CT), Punjagutta Division, Hyderabad. In the meanwhile, the impugned penalty proceedings dated 19.03.2015 are issued by the 2nd respondent.

Against the orders of the assessing authority, the appeal filed by the petitioner is allowed by order dated 20.04.2015 in Appeal No.CV/66/2014-15, by the Appellate Deputy Commissioner, and the matter was remanded to the assessing authority, with certain directions, to pass fresh orders in accordance with law.

Heard learned counsel for the petitioner and also the learned Special Standing Counsel for Commercial Taxes appearing for the respondents.

In this writ petition, it is contended by the learned counsel for the petitioner that, as much as assessment order is already set aside by the Appellate Deputy Commissioner and the matter is pending before the assessing authority, the impugned proceedings dated 19.03.2015 passed in AAO.No.10325, imposing penalty, are fit to be set aside.

The impugned proceedings imposing penalty are consequent to the order passed by the assessing authority determining the tax liability of the petitioner for the tax period from July, 2012 to January, 2014. When the order of the assessing authority is already set aside, the impugned proceedings imposing penalty cannot survive independently.

As it is stated that proceedings are pending before the assessing authority, the writ petition is allowed, by setting aside the impugned proceedings dated 19.03.2015 passed in AAO.No.10325. However, it is made clear that if orders are passed by the assessing authority pursuant to the remand order passed by the Appellate Deputy Commissioner, it is open to the assessing authority to pass fresh orders imposing penalty in accordance with law. No order as to costs.

As a sequel, miscellaneous petitions if any pending in the Writ Petition stand disposed of.

R.SUBHASH REDDY,J

Dr. B.SIVA SANKARA RAO,J

April 30, 2015

v v/MRR