IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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<u>W.P. No.17115 of 2015</u>

<u>Between</u>:

Dudekula Nagoor Vali

… Petitioner

And

The State of Andhra Pradesh,
Rep.by its Principal Secretary,
Department of Revenue,
Secretariat Buildings,
Hyderabad and others.

… Respondents

JUDGMENT PRONOUNCED ON : <u>19.08.2015</u>

THE HON'BLE SRI JUSTICE : <u>G.CHANDRAIAH</u>

AND

THE HON'BLE SRI JUSTICE : <u>CHALLA KODANDA RAM</u>

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? :

2. Whether the copies of judgment may be marked to Law Reporters/Journals. :

3. Whether their Ladyship/Lordship wish to see the fair copy of the Judgment? :

THE HONOURABLE SRI JUSTICE G.CHANDRAIAH
AND
THE HONOURABLE SRI JUSTICE CHALLA KONDANDA RAM

W.P. No.17115 of 2015

ORDER: (Per the Hon'ble Sri CKR, J)

The first petitioner, Dudekula Nagoor Vali, is the partner of the second petitioner, M/s. Bharathi Exports, Firm.

In the writ petition, assessment order dated 26.09.2006 is challenged before this Court.

The specific case of the petitioners is that there is a mistake in identity of the Firm in making the assessment. In spite of specific pleadings by the petitioners, an assessment was made fastening a huge liability of tax of Rs.27,20,632/- attributing a turnover of Rs.2,68,23,703/-.

It is also the specific case of the petitioners, before the assessing authority, that the petitioners' total turnover under APGST and CST registration was only Rs.2,74,809.50 paisa, whereas a turnover of Rs.2,68,23,703/- has been attributed to the petitioners. To support their contention, the 2nd petitioner placed the bank account as evidence that no amount of the alleged magnitude reflecting the turnover have been received by the petitioners. The Assessing Officer ignored the pleas of the 2nd petitioner and made assessment based on the DEP Bills data showing a turnover of Rs.2,68,23,703/-. As the huge demand was made by way of assessment and the petitioners being a small Firm could not pay the 12½% mandatory deposit for filing the appeal, consequently the appeal filed by the petitioners was not entertained and the same came to be dismissed by the Appellate Deputy Commissioner on 20.11.2007.

Long thereafter, Form No.5, notice of attachment, dated 20.02.2015, was published in the District Gazette attaching the agricultural land property of the first petitioner in Survey R.S. No.381/2, 50/2, 50/4, 44/2 of Rayavaram Village, Markapur Revenue Mandal, Prakasam District.

The first petitioner, initially, filed the writ petition raising various pleas in addition to the plea that there is a mistake of identity on the part of the Assessing Officer in making the assessment to support their contention. Thereafter, with the leave of the Court, the 2nd petitioner's firm was joined as petitioner.

A letter dated 12.06.2015 was placed on record. The same was addressed by the Joint Director, General of Foreign Trade, Government of India, Ministry of Commerce and Industry, Hyderabad, to the C.T.O., clarifying to the effect that it was one M/s. Bharath Exporters, Flat No.104, H.No.8-2-293/3, E-Venue Appartments, Road No.14, Banjara Hills, Hyderabad were issued DEPB licenses against IEC No.0900001984 but not issued any DEPBs to M/s. Bharathi Exports, Plot No.59, Industrial Estate, Markapur, Prakasam District against their IEC No.0901001988. In other words, a turnover that is attributable to M/s. Bharath Exporters has been fastened to M/s. Bharathi Exports on account of similarity of the name. In this context, it is significant to note that there was no other material before the assessing authority except the data relating to the DEPB licences to fasten the liability on the second petitioner's firm and the burden of proving the turnover does not belong to the petitioners has been cast on the petitioners in spite of their specific denial by producing the material particularly, the bank account etc. Further, the second petitioner is registered dealer with the 3rd respondent, Commercial Tax Officer, Markapur, since 2001. There is no denial of the above aspect by the respondents. In fact no counter is filed in spite of granting time.

In the light of the clarification issued by the Joint Director, General of Foreign Trade, Government of India, Ministry of Commerce and Industry, Hyderabad, and as this is a clear case of mistake in identity the very assessment order, which is made on the M/s. Bharathi Exports,

2nd petitioner, is quashed, however, liberty is given to the respondent to proceed against the M/s. Bharath Exporters, in accordance with law. The assessment order to the extent of export turnover of Rs.27,20,632/- shall be deleted from the assessment of the second petitioner i.e.
M/s. Bharathi Exports. Consequent upon our finding that there was no liability that could be fastened to the second petitioner, the attachment order

issued against the personal properties of the first petitioner, partner, is also liable to be quashed and accordingly, the same is quashed.

With the above, this writ petition is allowed.

As a sequel, miscellaneous petitions, if any, stands closed. There shall be no order as to costs.

JUSTICE G.CHANDRAIAH

JUSTICE CHALLA KODANDA RAM

Date: 19.08.2015
LSK