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

WRIT PETITION No.6807 of 2012

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

This writ petition is filed by the petitioner seeking *Mandamus* challenging the order in Form VAT-305, dated 13.7.2011 issued by the 1st respondent-Commercial Tax Officer, Mehdipatnam Circle, Hyderabad, as confirmed by the 3rd respondent-Appellate Deputy Commissioner (CT), Punjagutta Division, Hyderabad, in Appeal No.CV/61/2011-12, dated 21.2.2012, as arbitrary and illegal and consequently to declare that PP Woven Sacks are taxable only at 4% under Entry 90 of Schedule IV as packing material even before 2.6.2006.

2. The petitioner is engaged in manufacture and trading of HDPE/PP Woven Sacks and fabric, having its Factory at Kattedan, Hyderabad, and also its units at Sholapur in Maharashtra and Gulburga in Karnataka States. It is a dealer on the rolls of 1st respondent with TIN No.28340100287 under the provisions of the A.P. Value Added Tax Act, 2005 (for brevity "the Act"). It is the case of the petitioner that it has purchased granules from local registered dealers and also from other States and manufactures plastic fabric, which are in turn converted into Woven Sacks, and sold as HDPE/PP woven sacks.

For the period from April, 2005 to June, 2006, by classifying the goods manufactured by it under Entry 90 of

Schedule-IV, the petitioner has paid tax at 4%. Subsequently, based on the audit objections, revised proceedings are initiated in exercise of powers under Section 21 of the Act. After issuing a show cause notice and inviting objections, the 1st respondent-Commercial Tax Officer has passed assessment orders dated 13.7.2011 holding that the petitioner is a manufacturer of P.P. Woven Sacks and paying tax at 4% on the ground that PP Woven Sacks fall under Entry 90 of Schedule IV. It is stated that the rate of tax was reduced to 4% on PP Woven Sacks with effect from 1.6.2006 only after issuance of G.O.Ms.No.656, Revenue, dated 2.6.2006 by an amendment to Entry 100 of Schedule IV, as prior to amendment to Entry 100 of Schedule IV, the PP Woven Sacks are liable to tax at 12.5% and accordingly levied tax of Rs.1,51,37,770/-. The appeal preferred against the said assessment order before the 3rd respondent-Appellate Deputy Commissioner also ended in dismissal by order dated 21.2.2012. Hence, the present writ petition.

3. It is the contention of the learned counsel for the petitioner that the assessment order is barred by limitation in view of the provision contained under Section 21(4) of the Act. It is submitted that as there is no allegation of evasion of tax, the petitioner bonafidely filed returns classifying the goods manufactured by it under Entry 90 of

Schedule-IV of the Act and hence, the limitation period is four years and the orders passed by the assessing authority are barred by limitation. It is also contended that in the absence of any new material manufactured by the petitioner, it is not open to the assessing authority to pass a revised order.

4. On the basis of the counter affidavit filed by the respondents, it is contended by the learned Special Standing Counsel for Commercial Taxes that in view of evasion of tax by the petitioner by wrongly classifying the goods manufactured by it under Entry 90 of Schedule-IV, instead of Entry 100, the provisions under Section 21(5) of the Act will apply, in which event, the limitation period is six years, but not four years. It is further contended that in view of the audit objection, it is always open to the respondents to revise the assessment order, which was wrongly passed.

5. Having heard Sri S. Dwarakanath, learned counsel for the petitioner as well as the learned Special Standing Counsel for Commercial Taxes, we have perused the objections filed by the petitioner.

6. A perusal of the objections shows that the petitioner has not raised any objection with regard to the limitation aspect either before the assessing authority or before the appellate Deputy Commissioner. Though the learned counsel for petitioner is placing reliance on a judgment of this Court in VIJAYA VENKATA DURGA OIL

TRADERS v. CTO (T AND A.P.)[1] in support of his argument that in the absence of filing any objections, there was no occasion to deal with the issue of limitation either by the assessing authority or by the appellate Deputy Commissioner.

7. Therefore, in view of the allegation made against the petitioner, whether it constitutes evasion of tax or not and whether it falls under Section 21(4) or (5) of the Act is required to be reconsidered by the assessing authority.

8. Having regard to the arguments advanced before this Court, we deem that it is a fit case to remit the matter for fresh consideration by the Assessing Authority. It is open to the petitioner to file additional objections, if any, within a period of four weeks from today. On filing such objections, the Assessing Authority shall pass appropriate orders in accordance with law after giving an opportunity of hearing to the petitioner. It is made clear that the Assessing Authority shall pass appropriate orders basing on its own merits uninfluenced by any of the observations made in this order.

9. Subject to the above directions, this writ petition is disposed of. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE R. SUBHASH REDDY

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Dr. JUSTICE B.SIVA SANKARA RAO

24.03.2015.

Msr

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[1] (2014) 76 VST 129 (T and AP)