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

WRIT PETITION No.4088 OF 2014

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

This Writ Petition is filed questioning the order, dated 08.01.2014, passed in R.F.No.3/2012-2013 by the Deputy Commissioner (Commercial Taxes), No.II Division, Vijayawada – respondent No.1.

Petitioner is a dealer registered under the provisions of Andhra Pradesh Value Added Tax Act, 2005, and is engaged in the business of manufacture and fabrication of petroleum tankers and its cabins. The Assistant Commissioner (Commercial Taxes), LTU, Vijayawada, audited the accounts of the petitioner for the tax period 2009 – 10 and 2010 – 11 and assessed the under declared tax at Rs.11,511/- on a turnover of Rs.79,386/-, and accordingly, passed orders in Form VAT 305, dated 26.07.2010. Subsequently, on examination of the audit record, it was noticed that the petitioner has disclosed 4% output turnovers in monthly VAT 200 returns and paid tax at 4% on that turnovers, but as per Memo No.10456/CT 11/2009, dated 21.05.2010, Bus Body Buildings are categorised as sale and liable to tax at

12.5% / 14.5% prospectively with effect from 30.12.2008. Hence, respondent No.1 has taken up revision proceedings, and accordingly, issued revised show-cause notice, dated 15.05.2012. Petitioner has not filed written objections to the notice, dated 15.05.2012, but one V. Chiranjeevi, authorised accountant of the petitioner, has appeared for personal hearing. Mainly on the ground that written objections are not filed, the proposed revision was confirmed by the impugned order, dated 08.01.2014, determining the tax due to the Department at Rs.6,09,856/-.

At the stage of admission, this Court, by order, dated 02.07.2014, granted interim stay on condition of petitioner depositing one-fourth of the amount demanded pursuant to the impugned order, dated 08.01.2014.

When the matter is called, it is submitted by the learned counsel for petitioner that in compliance to the directions of this Court in the order, dated 02.07.2014, one-fourth of the amount demanded has been deposited.

Having heard the learned counsel for parties, we have perused the material on record.

Though respondent No.1 proposed revision and accordingly issued revised show-cause notice based on

Memo, dated 21.05.2010, proposing to levy tax at 12.5% / 14.5%, instead of 4% as paid by the petitioner, petitioner has not filed written objections and one V. Chiranjeevi has appeared on behalf of petitioner for personal hearing. Having regard to the allegations made, there is no reason for not filing written objections. Only on the ground that the petitioner has not filed written objections, the revisional authority has confirmed the proposed revision without dealing with the matter further.

As one-fourth of the amount demanded was already deposited by the petitioner, we are of the view that it is a fit case to consider the matter afresh by giving further time of four weeks from today to the petitioner for filing written objections to the revised show-cause notice, dated 15.05.2012.

For the aforesaid reasons, the impugned order, dated 08.01.2014, is set aside. Petitioner is directed to file written objections to the revised show-cause notice, dated 15.05.2012, within a period of four weeks from today, and after filing such objections, it is open to respondent No.1 to pass orders afresh, after giving opportunity of hearing to the petitioner. In the written objections, the petitioner shall furnish the address for communication and also the mobile number of authorised representative to attend for personal hearing. The amount deposited by the petitioner pursuant to the order of this Court, dated 02.07.2014, shall be subject to the final orders to be passed by the respondent – authorities.

Subject to the above, the Writ Petition is allowed. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. No costs.

R. SUBHASH REDDY, J

Dr. B. SIVA SANKARA RAO, J

March 10, 2015

Note: Issue C.C. in one week.
B/o.MD