IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WEDNESDAY, THE SEVENTEENTH DAY OF JUNE

TWO THOUSAND AND FIFTEEN

PRESENT

THE HONOURABLE SRI JUSTICE G.CHANDRAIAH

AND

THE HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

W.P. No.16575 of 2015

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Between:

M/s. Sri Bharat Fertilizers

… Petitioner

And

State of A.P.,

Commercial Taxes Department,

Secretariat, Hyderabad and others.

… Respondents

THE HONOURABLE SRI JUSTICE G.CHANDRAIAH

AND

THE HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

W.P. No.16575 of 2015

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

Heard the learned counsel for the petitioner and the learned Government Pleader.

This writ petition is filed questioning the attachment notice dated 02.03.2015 and consequential notice of sale dated 15.05.2015 issued under the Andhra Pradesh Value Added Tax Act, 2005 (for short 'the Act').

The facts on record are not in dispute except to the extent of certain amounts, which the petitioner claims to have paid, which require verification. The petitioner, who is a dealer in fertilizer, came to be assessed under the Act for the period 2013-14 and 2014-15 and was liable to pay a sum of Rs.14,98,066/-. However, there was a arithmetical error in computation of the same as for the period December, 2014 and actual amount of VAT payable is only Rs.4,30,763/- in place of Rs.5,04,615/- as mentioned in the demand notice dated 07.02.2015. It is an admitted fact that even after given credit to the amounts paid by the petitioner and the correction of the mistake for the period December, 2014, still an amount of Rs.13,68,000/- would be payable. However, this figure of Rs.13,68,000/- is subject to verification as the petitioner claims that he also paid an amount of Rs.1,00,000/-. At any rate, fact remains that an amount of Rs.10,00,000/- and odd is required to be paid. However, the petitioner had made a representation dated 24.04.2015 to the 2nd respondent, Deputy Commercial Tax Officer, setting the details of disputes in relation to between the petitioner and vendor of the petitioner. O.S. No.878 of 2010 is in relation to the same property, which is sought to be put to auction for recovery of VAT dues. In the said representation, the petitioner also had committed to pay arrears of tax within a short period and requested to grant time.

Section 22 (6) of the Act provides for granting of payment of tax dues in instalments, which reads as under:

> "(6)(a) The Deputy Commissioner, on an application made by a VAT dealer or any other dealer, permit the payment of any tax, penalty or other amount due under the Act in such instalments within such intervals and subject to such conditions, as he may specify in the said order, having regard to the circumstances of each case;
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> (b) Where such payment in instalments is permitted, the dealer shall pay in addition to such tax, penalty, instalment or other amount, (interest calculated at the rate of one and quarter (1.25%) percent per month) for the amount for the period from the date specified for its payment on the instlments so permitted."

Inasmuch as, the petitioner had made an application to the Deputy Commercial Tax Officer on 24.04.2015 and whereas, the provision empowers the Deputy Commissioner and the same is required to be considered by the authorities.

In that view of the matter, without considering the representation made by the petitioner it may not be justified to put the property for auction in the facts of the present case. However, considering the fact that the petitioner owes a large sum of money, pending consideration of the representation made by the petitioner, the proposed auction shall not be proceeded with. The petitioner shall pay a sum of Rs.1,00,000/- within three weeks, from the date of receipt of a copy of this order. Petitioner shall also make a fresh representation to the Deputy Commissioner, within a period of four weeks, from the date of receipt of a copy of this order, who alone is the competent authority, setting out the details of the dispute and seeking instlments, and within a period of eight weeks thereafter, the authority concerned shall consider the same and pass appropriate orders, in accordance with law.

However, liberty is given to the petitioner’s counsel to intimate about the order passed by this Court.

This writ petition is disposed of, accordingly. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, shall stand dismissed.

JUSTICE G.CHANDRAIAH

JUSTICE CHALLA KODANDA RAM

Date: 17.06.2015

Note: Furnish certified copy by today.

B/o.

LSK