HON'BLE SRI JUSTICE G. CHANDRAIAH
AND
HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

SPL.A.MP.(SR).No.2078 of 2016
in/and
SPECIAL APPEAL No.18 of 2004

O R D E R : (per Hon'ble Sri Justice G. Chandraiah)

This Special Appeal is preferred by the appellant aggrieved by the order dated 31.12.2002 passed by the Commissioner of Commercial Taxes, Hyderabad, vide Ref.No.LV(2)/2595/2002.

The matter pertains to the Assessment Year 1984-85. The proceedings went on different levels and ultimately in the year 2002, the Commissioner of Commercial Taxes passed the impugned order dated 31.12.2002, vide Ref.No.LV(2)/2595/2002. Challenging the same, the present Special Appeal has been preferred by the appellant.

On earlier occasion, the Special Appeal was dismissed for default by order dated 18.03.2015. Thereafter, an application was filed seeking restoration of the appeal. During the pendency of said application, the impugned demand for penal interest vide No.Ref.Rc.SAS/6/2013, dated 29.01.2016 was issued by the Commercial Tax Officer, Vijayawada Division-I, requiring the appellant to pay a sum of Rs.10,18,401/- towards penal interest @ 36% per annum on the arrears of tax of Rs.1,06,238/-. The present application in Spl.A.MP.(SR).No.2078 of 2016 is filed seeking suspension of the said order dated 29.01.2016.

Learned counsel for the appellant vehemently contended that initially the disputed amount of tax due is only Rs.1,06,238/-. As against the said amount, an exorbitant amount of Rs.10,18,401/- is sought to be collected towards penal interest @ 36% per annum. Therefore, the further order dated 29.01.2016 that was passed is not on merits.

The learned Standing Counsel for Commercial Taxes opposed the same.

It is to be noticed that on the earlier occasion when Special Appeal No.38 of 1994 was filed on the ground that no notice was served on the appellant, that was allowed by order dated 28.08.2002 remanding the matter, with a specific direction to the appellant to furnish the correct address to which notices could be served for the purpose of passing final order by the Commissioner of Commercial Taxes. Accordingly, notices were served on the appellant. Having received the notice, the appellant did not turn up to pay the arrears of tax. Under those circumstances, the impugned order dated 31.12.2002 came to be passed. Therefore, it cannot be said that it is not on merits. When once the appellant is served with a notice, it is mandatory on the part of the appellant to appear before the authorities and contest the matter. Therefore, inspite of giving ample opportunity to the appellant, when the appellant failed to appear, there is no other option for the respondent except to pass the impugned order dated 31.12.2002. Though, we do not see any reason to interfere with neither the impugned order dated 31.12.2002 nor the order dated 29.01.2016 demanding to pay penal interest, still, principles of natural justice demand that yet another opportunity can be afforded to the appellant to ventilate its grievance.

Hence, in the interest of justice, the matter is remanded to the Commissioner of Commercial Taxes only on condition of the appellant depositing $1/4^{th}$ of the impugned demand (which includes arrears of tax and penal interest thereon i.e., Rs.1,06,238/- + Rs.10,18,401/-) within a period of two months from the date of receipt of a copy of this order. On such deposit, the matter is remanded to the Commissioner of Commercial Taxes, Hyderabad, to pass appropriate orders after giving opportunity to both the parties.

Accordingly, the appeal is disposed of. No order as to costs.

As a sequel, miscellaneous petitions pending, if any, in this appeal shall stand closed.

JUSTICE G. CHANDRAIAH

JUSTICE A.SHANKAR NARAYANA

20.04.2016.
Msr

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