THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

W.P.No.25796 of 2007

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

The proceedings under challenge in this writ petition is the assessment order passed in Form Vat-305 dated 29.10.2007, for the period 2005-06 and 2006-07 levying tax at 4% on the under-declared turnover; and in imposing penalty at 100% of the tax.

By the show cause notice issued in Form Vat-305A, the petitioner was informed that they had not produced any proof to the office that the goods pertained to agriculture principals such as copies of the pass books, certificates from the MRO/Village Assistant/Sarpanch of the Village where the crop has been grown etc; they had failed to produce evidence to show that they had sold taxable goods on behalf of agriculturist principals; they had raised tax invoices and sale bills, for the sale of taxable goods; and, as such, they were liable to pay VAT as per the provisions of the A.P. Value Added Tax Act, 2005.

In reply to the show cause notice, vide letter dated 20.10.2007, the petitioner stated that their main business was only to sell agricultural produce on behalf of agriculturists; their firm did not carry on any business by itself, and it only acts as a commission agent, on behalf of agriculturists, for the agricultural produce brought by the agricultural principals for sale to their shop, and also to the market yard; after the prospective buyer offers the acceptable price, the goods are sold under the selling agency, to such prospective buyers; and copies of the assessments done by agricultural market committee, with reference to the account books duly stamped, had already been submitted to their office.

Sri G.Narendra Chetty, learned counsel for the petitioner, would submit that none of the objections raised by the petitioner, or the ruling of the advance ruling authority, was considered by the assessing authority; he had, by a common order, levied tax and 100% thereof as penalty; and on both counts the impugned assessment order is liable to be set aside. Learned counsel would rely on ***Sangam Health Care Products Ltd. vs. Commercial Tax Officer***[1] and ***Delta Lubricants, Vijayawada vs. The Deputy Commercial Tax Officer***[2] .

On the other hand Sri J.Anil Kumar, learned Special Standing Counsel for Commercial Taxes, would submit that none of the documents, referred to by the assessing authority in the show cause notice, was produced by the petitioner; commission agents are also required to produce evidence in terms of Rule 34(1) of the A.P.Value Added Tax Rules, 2005 (for short "the Rules"); and failure on the part of the petitioner to produce any evidence to show that they had merely acted as agents to agriculturists, and did not sell agricultural produce themselves, justified levy of tax, at 4% of the value of the subject goods, by the assessing authority.

Rule 34(1) of the Rules requires any person, acting as a selling agent on behalf of agriculturist principals, or any other dealer not registered as a VAT dealer or as a TOT dealer, to maintain records in Form 521 containing the full particulars of the names and addresses of agriculturist principals, names and addresses of the buying dealers with TIN/GRN, name and quantity of the commodity sold, the date of sale, value of sale etc. The said Rule also requires the said person to submit, every month, a copy of Form 521 along with proof to the Commercial Tax Officer having jurisdiction where such agent is located. It is not the petitioner's case that, in compliance with Rule 34(1) of the Rules, they had filed a copy of Form-521 every month. The finding recorded by the assessing authority in the impugned order, that no evidence was produced to show that the petitioner had acted as agent of agriculturists, is justified.

While the assessing authority has not specifically referred to

Rule 34(1) of the Rules, and his order is no doubt cryptic, the fact remains that it is not even the petitioner's case, in the writ petition filed before this Court, that they had complied with the requirement of Rule 34(1) of the Rules, or that they had produced sufficient evidence to show that the goods, which were subjected to tax, were in fact sold on behalf of agriculturists, and not by the petitioner as a selling dealer. A Division Bench of this Court, in ***Sangam Health Care Products Ltd.***[1], held that the assessing authority, while passing an assessment order, is under an obligation not only to refer to the contents of the application submitted by the dealer in detail, but also to record reasons, if the explanation for any reason is not acceptable; bald and cryptic orders do not inspire any confidence; and they cannot be treated as orders passed in the bonafide exercise of power.

While the assessment order is, no doubt, brief, it is also evident that the petitioner had failed to produce any evidence to show that they had sold taxable goods on behalf of agricultural principals. It is neither the petitioner's case nor have they produced any evidence even before this Court, to show that the taxable goods sold by him is not as a selling dealer but was on behalf of agricultural principals. We see no reason, therefore, to interfere with the assessment order to the extent tax was levied at 4% on the under-declared turnover.

In so far as imposition of 100% tax as penalty is concerned, a Division Bench of this Court, in ***Delta Lubricants, Vijayawada***[2], held that a common order of assessment and penalty cannot be passed. To the limited extent penalty, at 100% of the tax, was imposed, along with the tax assessed in Form Vat-305, the impugned order, is set aside. It is made clear that this order shall not preclude the respondents from initiating penalty proceedings afresh, and in accordance with law.

The writ petition is disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 28.03.2016

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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

W.P.No.25796 of 2007

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[1] 2005(41) APSTJ 99

[2] 2006(43) APSTJ 27