<u>THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN</u>
<u>and</u>
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

<u>WRIT PETITION No.36807 of 2015</u>

<u>ORDER</u>: (*Per Hon'ble Sri Justice M.Satyanarayana Murthy*)

This writ petition is filed to issue writ of *mandamus* declaring the assessment order bearing No.2911 dated 15.07.2014 and penalty order No.4595 dated 31.07.2014 issued by respondent No.4 and the Form-IV notice dated 29.09.2015, as illegal, arbitrary; and, consequently, to set aside the same and remand the matter to respondent No.4 for re-assessment.

2. Petitioner No.1 is a registered dealer engaged in sale of tractors, spares and lubricants within the jurisdictional limits of respondent No.4 and carrying on business and purchased tractor spares and lubricants from the registered dealers within the State and outside the State and sold locally.

3. Respondent No.4 conducted audit at the place of his business on 14.11.2013 and later, issued Form VAT 305-A on 11.04.2014 proposing to assess tax at Rs.23,20,347/- while inviting objections within seven days. Respondent No.4 again issued a similar notice in Form VAT 305-A on 20.06.2014 proposing to assess the

tax at Rs.23,20,347/- granting seven days time for objections along with documentary evidence. As respondent No.4 was out of station, the petitioners could not file their objections within the stipulated time. Again respondent No.4 issued Form VAT 305 assessment order No.2911 dated 15.07.2014 confirming the tax of Rs.23,20,347/- and demanded remittance of the said amount within 30 days with a threatened action to initiate necessary proceedings under the provisions of the A.P. VAT Act, 2005. Since the petitioners did not pay VAT demanded in Form VAT 305-A, respondent No.4 issued a notice in Form VAT-203 dated 31.07.2014, demanding the petitioners to pay 100% penalty, which comes to Rs.23,20,347/-. Thereafter, respondent No.3 issued final notice dated 11.11.2014 demanding payment of Rs.46,55,660/- and later, issued Form-IV notice on 29.09.2015.

4. It is the specific contention of the petitioners that respondent No.4 was initially authorized by the Deputy Commissioner, Nellore (respondent No.2) on 12.08.2013 to conduct audit and assessment and consequent upon the assessing authorities conducted VAT audit on 14.11.2013, issued show notice in Form VAT 305-A on 11.04.2014 for the assessment year 2013-14, but no order was passed in pursuance of the said notice. However, respondent No.4 issued another show cause notice on 20.06.2015 informing that audit was conducted

on 17.02.2013 obtaining separate authorization for assessment on 20.06.2014, which resulted in passing assessment order dated 15.07.2015.

5. The main challenge of aforesaid orders is that the Assessing Authority had no authorization from competent authority to conduct audit and assessment and various authorizations referred in various notices are neither true nor correct and, thereby, the assessment penalty and consequential notices are without proper authorization from respondent No.2 authorizing respondent No.4 to audit and assessment. In the absence of such authorization, those proceedings are illegal and vitiated by irregularities and prayed to set aside the same.

6. During pendency of the petition, the petitioners filed W.P.M.P. No.55601 of 2015 seeking leave of the Court to file additional affidavit raising a specific ground that the petitioners are entitled to input tax credit under Section 13(1) of the A.P.VAT Act, 2005, but respondent No.4 did not extend the said benefit while passing assessment order dated 15.07.2014.

7. Respondents filed counter raising several contentions denying the allegation that the respondent No.4 did not possess proper authorization, *inter alia*, contending that respondent No.2 issued authorization to

respondent No.4 to audit the petitioners' accounts in Form ADM1B No.20130807174985 dated 07.08.2013 and in pursuance of the said authorization, the respondents issued intimation in Form VAT 304 dated 08.08.2013 to the petitioners. In response to it, petitioner No.1 gave statement, when respondent No.4 visited the business premises to audit the accounts, stating that they are selling tractors, spare parts, lubricants, etc., at nearby places at Kanigiri. During the assessment period from 01.11.2013 to 14.11.2013, no business transaction took place. However, certain bills were found during the said period.

8. As the matter stood thus, urgent notice dated 27.11.2013 was issued directing petitioner No.1 to furnish documentary evidence by registered post with acknowledgment due on 04.12.2013 and the same was returned un-served with endorsement "Refused. Hence, returned to the sender." Again, respondent No.4 sent another urgent notice dated 10.12.2013 calling upon petitioner No.1 to produce complete information and documentary evidence within seven days with threat to take action. Receipt of the same was acknowledged by the petitioners on 10.12.2013. As there was no response from the petitioners, respondent No.4 again obtained authorization from respondent No.2 in Form ADM1C bearing No.20140620323898 dated 20.06.2014. Thereupon, a show cause notice was issued in Form VAT

305A dated 20.06.2014 and passed assessment order dated 15.07.2014, served on the assessee by registered post with acknowledgment due on 19.07.2014. Similarly, for non-compliance of the tax demanded, a penalty show cause notice dated 15.07.2014 in Form VAT 203A was issued and, thereafter, Form VAT 203 dated 31.07.2014 was issued and the same was served on petitioner No.1 by registered post with acknowledgment due. Later, an urgent notice dated 20.10.2014 was issued and a demand was made for payment of tax, penalty within 15 days with threatened action to proceed further as per the provisions of the A.P. VAT Act, 2005. Later, a final notice dated 11.11.2014 was issued for payment of tax and penalty amount. As there was no response to the same, a garnishee notice was issued on 17.01.2015 in Form VAT 206 to petitioner No.1 under Section 29 of the A.P. VAT Act, 2005. Respondent No.3 also issued notice dated 15.09.2015 to the Sub-Registrar, Kanigiri, requesting to issue encumbrance certificate of the properties of petitioner No.1 to take further action under the A.P. Revenue Recovery Act, 1864, and issued Form No.4 demand prior to attachment of land under Section 25 of the A.P. Revenue Recovery Act, 1864.

9. It is specifically contended that the authorization in ADM1B No.20130807174985 dated 07.08.2013 mentioned in Form VAT 305A dated 20.06.2014 does not

pertain to the petitioners and it relates to other dealers, i.e., Sri Ramesh Bullion and Jewellery Mart and Ramakrishna Traders, Ongole-1, issued by respondent No.2, but inadvertently, in the process of typing, the same was mentioned and, on this ground, no order can be passed setting aside the assessment and penalty order, prayed for dismissal of the writ petition.

10. During the course of hearing, Sri Venkat Reddy Chittem, learned counsel for the petitioners, contended that respondent No.4 is not clear as to the authorization for conducting audit and passing assessment order, in the absence of order for both audit and assessment separately, as required under the Act, the assessment and penalty orders passed by respondent No.4 and consequential final notice issued are illegal, to support his contention, he placed reliance on a judgment of this Court in **Dekars Fires @ Security Systems Pvt. Ltd., Hyderabad Vs. The Deputy Commissioner (CT), Secunderabad Division, Hyderabad and others**[1]. He further contended that though assessment and penalty orders were not challenged when a final notice was issued while challenging the final notice, the assessment order be passed under the provisions of the A.P. VAT Act, 2005 also can be challenged. However, at the end of the argument, it is contended that input tax credit on the local

purchasers was not given while passing assessment order. Therefore, the assessment, penalty orders and final notice are illegal. Learned counsel also pointed out, the discrepancy in the amount demanded in the final notice, the actual tax amount due by the petitioners was only Rs.23,20,347/- as per the assessment order and the penalty of 100% comes to Rs.23,20,347/-, but respondent No.4 in final notice dated 11.11.2014, demanded Rs.46,55,662/-, whereas in notice of demand prior to attachment of land, the total amount claimed was Rs.46,40,694/-. In view of this discrepancy and for the lack of separate authorization for conducting audit and passing assessment order, the assessment order, penalty order and final notice are liable to be set aside.

11. Whereas, Sri Shaik Jilani Basha, learned Standing Counsel for the respondents, would submit that there is a mistake, in the reference given in notices about the authorization bearing No.ADM1B No.20131230523098 dated 30.12.2013, it is purely a mistake of respondent No.4, since it pertains to Sri Ramesh Bullion and Jewellery Mart and Ramakrishna Traders, Ongole-1, and merely because, a mistake is committed in referring authorization, it is not a ground to quash the entire proceedings, and, on this ground, no relief can be granted to the petitioners. Apart from that, the order passed by respondent No.4 is in accordance with law and finally prayed to dismiss the writ petition.

12. In view of the discrepancy pointed out by the learned counsel for the petitioners, learned Standing Counsel for the respondent produced the original record for perusal of this Court. On perusal of the said original record, respondent No.4 was authorized to audit and assess initially and the same was treated, for limited purpose of audit in ADM1B No.20130807174985 dated 07.08.2013, later, obtained authorization in ADM1C No.20140620323898 dated 20.06.2014 for assessing the dealer.

13. The main ground urged by the petitioners is that for quashing the orders of both assessment and penalty and consequential final notice is that in various correspondence, there is lot of discrepancy with regard to authorization and, according to the settled law, unless the Assessing Officer is authorized to audit and asses, separately, the assessment cannot be upheld and drawn attention of this Court to a judgment of a Division Bench of this Court in **Dekars Fires** case (1 supra), where it is held that for audit and assessment, two separate authorizations are required, and, in the absence of authorization, the assessment order is invalid, placing reliance on **Sri Balaji Flour Mills, Chittoor and others Vs. The Commercial Tax Officer-II, Chittoor and others**[2]. Even in **Sri Balaji Flour Mills** case (2 supra), a

Division Bench of this Court held that authorization for audit of value added tax accounts of the dealer and authorization to assess are two distinct requirements and the former alone would not suffice to undertake the assessment. There is no quarrel about the law laid down by this Court, but there is a little discrepancy in reference of the authorization in various notices and orders of assessment and penalty.

14. A perusal of the material goes to show that in Form VAT 305-A dated 11.04.2014 and 20.06.2014, the first reference mentioned therein is authorization issued by respondent No.2 in ADM1B No.20130807174985 dated 12.08.2013. Whereas, in Form VAT 305 the assessment order dated 15.07.2014, the first reference mentioned was ADM1B No.20130807174985 dated 12.08.2013. In the body of Form VAT 305A dated 20.06.2014, in the first paragraph of page No.2, a reference was made regarding authorization of respondent No.4 issued by respondent No.2 as ADM1B No.20131230523098 dated 30.12.2013. Similarly, same reference was given in fourth paragraph of page No.2 of assessment order. But in penalty order, reference Nos.1 and 4 pertain to authorization for audit and for assessment of the dealer issued by respondent No.2 to respondent No.4. No reference was made as to the other authorization ADM1B No.20131230523098 dated 30.12.2013. Thus, a vague reference was made in

certain orders about the authorization pertaining to the other dealer pertaining to Sri Ramesh Bullion and Jewellery Mart and Ramakrishna Traders, Ongole-1, with some number, but with different date.

15. On verification of the record produced by the learned Standing Counsel for the respondents, it is clear that respondent No.2 authorized respondent No.4 by issuing ADM1B No.20130807174985 dated 07.08.2013, for conduct of inspection/assessment/inspection-cum-assessment of the dealer. As discussed above, there is a wrong reference of authorization in the assessment order and other notices while referring the authorization issued by respondent No.2 to respondent No.4 for conducting audit and assessment, this is only typographical mistake. But, that itself is not a ground when respondent No.4 was properly authorized strictly adhering to the provisions of the A.P. VAT Act, 2005 and law declared by this Court in **Sri Balaji Flour Mills** case (2 supra). Thus, it is clear that respondent No.4 was authorized to conduct audit as per Form ADM1B No.20130807174985 dated 07.08.2013 and authorized to assess as per the authorization in Form ADM1C No.20140620323898 dated 20.06.2014. Therefore, on the ground of lack of separate authorization to conduct audit and pass assessment order by applying the principle laid down in **Dekars Fires** case (1 supra), the impugned orders of assessment, penalty and final notice

cannot be set aside.

16. A feeble attempt is made to convince this Court to set aside the final notice, as there is a discrepancy in the amount demanded. Undoubtedly, there is a mistake in the total amount claimed in the final notice dated 11.11.2014, the total tax due is Rs.23,20,347/- and 100% penalty levied thereon is Rs.23,20,347/- as per the assessment order and penalty order. The total comes to Rs.46,40,694/-. Whereas, in the final notice, the tax due and penalty was wrongly claimed as Rs.23,27,831/- under two different heads and the total comes to Rs.46,55,662/-. However, in the body of the final notice, respondent No.4 claimed only Rs.46,40,694/- towards tax due and penalty for the period from 01.01.2012 to 14.11.2013. But, by mistake in the table, the amount was not correctly mentioned. Such mistake would not enure any benefit to the petitioners and, on the strength of said mistake, the final notice cannot be set aside. At best, the petitioners are not liable to pay Rs.14,968/-. Hence, we are of the considered view that on the ground of error in claiming excess amount of Rs.14,968/-, the final notice cannot be set aside. However, it is made clear that respondent No.4 is entitled to recover only Rs.46,40,694/-. Apart from that, in the subsequent notice dated 29.09.2015 issued under Section 25 of the A.P. Revenue Recovery Act, a demand prior to attachment disclosed that the amount due is only

Rs.46,40,694/-. Thus, consistent claim of respondent No.4 is for payment of Rs.46,40,694/-, but not Rs.46,55,662/-. Hence, we find no ground to set aside the assessment and penalty orders and also final notice.

17. Finally, by filing an additional affidavit, the petitioners raised a specific ground that while passing assessment order, respondent No.4 did not extend benefit of input tax credit under Section 13 of the A.P. VAT Act, 2005. This contention is not based on any material before this Court, and, at best, this contention would have been raised before the assessing authority, since the petitioners gave statement and produced records at the time of audit. While exercising judicial review under Article 226 of the Constitution of India, this Court cannot take up the role of appellate authority to decide the legality of the assessment order passed by the Assessing Officer. Therefore, in view of the limited power of this Court in judicial review, we find that it is not a fit case to correct the mistakes, if any, in the assessment order. Hence, on this ground, the orders and notice under challenge cannot be set aside. Therefore, we made it clear that the liability of the petitioners is limited to Rs.46,40,694/-, but not Rs.46,55,662/-.

18. In view of our foregoing discussion, we find no grounds to set aside the assessment order bearing No.2911 dated 15.07.2014, penalty order No.4595 dated

31.07.2014 issued by respondent No.4 and the Form-IV final notice dated 29.09.2015, and, consequently, the writ petition is liable to be dismissed.

19. In the result, the Writ Petition is dismissed, while limiting the liability of the petitioners to Rs.46,40,694/- (tax due + penalty). There shall be no order as to costs.

20. As a sequel thereto, miscellaneous petitions, if any pending in this writ petition, shall stand closed.

RAMESH RANGANATHAN, J.

M.SATYANARAYANA MURTHY, J.

Date: 03-02-2016

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[1] (2011) 40 VST 150 (AP)

[2] (2011) 40 VST 150 (AP)