THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NOs.10486 AND 10489 OF 2016

COMMON ORDER: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

Pursuant to the orders passed by this Court on 27.04.2016, the third respondent-Commissioner of Industries is present in Court today. A counter affidavit has also been filed on his behalf. The proceedings under challenge in both the Writ Petitions is the assessment order in Form VAT 305 dated 01.02.2016, and the consequential order of penalty under Rule 25(5) of the A.P. VAT Rules dated 08.03.2016.

Facts, to the limited extent necessary, are that the petitioner established a manufacturing unit at Gaganpahad, Rajendarnagar Mandal in 1991 and shifted the same to Katedan in Rajendarnagar Mandal in the year 2012. The third respondent had earlier sanctioned sales tax deferment under the Target Scheme, 2000 for Rs.66,69,390/- for the period from 01.12.1999 to 30.11.2013 (14 years), repayable from the years 2013-14 to 2027-28 vide proceedings dated 04.08.2000, and a final eligibility certificate was issued by the first respondent vide proceedings dated 19.08.2000. The petitioner claims to have paid deferred tax for the years 1999-2000 to 2001-2002 which fell due on 31.03.2014, 31.03.2015 and 31.03.2016 respectively. It is the petitioner's case that, because of statutory requirement, they shifted their manufacturing unit, at the fag end of the deferment period, under the *bona fide* belief that their eligibility under Target-2000 would not be affected in any manner. The petitioner claims to have submitted a representation to the third and fourth respondents on 23.04.2012 and would submit that the fourth respondent had in turn, by letter dated 26.04.2012, sought permission/ratification from the 3rd respondent for shifting of the unit; and there was no response thereto from the 3rd respondent.

Pursuant to an audit conducted at the petitioner's premises an assessment order was passed by the assessing authority who rejected the tax deferment amount of Rs.7,00,729/- and raised a demand mainly on the ground that the petitioner had shifted the unit from Gaganpahad to Shivarampally and had, consequently, violated the conditions of the eligibility certificate. On an appeal being preferred thereagainst, the Appellate Deputy Commissioner, by his order dated 04.07.2013, set aside the assessment order and remanded the matter to the assessing authority directing him to seek clarification from the 3rd respondent and to take appropriate action thereafter as per law. The petitioner is aggrieved by the fact that, even without awaiting clarification from the Industries Department, the impugned assessment order and the consequential penalty order was passed.

Sri T. Vinod Kumar, learned Special Standing Counsel for Commercial Taxes, would submit that, despite repeated reminders, no response was forthcoming from the Industries Department; as the assessment period was likely to be barred by limitation, the assessing authority had no other alternative but to pass impugned assessment order; and as the petitioner had violated Rule 25(5) of the A.P. VAT Rules the consequential order of penalty was passed.

As no information was forthcoming from the Industries Department, and the efforts of the learned Government Pleader for Industries in securing information from them was of no avail, we had perforce to direct the third respondent to appear before this Court along with entire records. The third respondent is present before us today, and a counter affidavit has been filed on his behalf wherein it is stated that the fourth respondent had sent a letter to the third respondent informing him of all the facts with regards the present case including violation of condition No.5 of the Final Eligibility Certificate by the petitioner; the fourth respondent had proposed cancellation of the Final Eligibility Certificate; in view of the proposals from the fourth respondent, the third respondent would take necessary action regarding the Final Eligibility Certificate by following the due procedure of law as early as possible; and the petitioner's representation would be disposed of within three months.

In view of the specific assertion in the counter affidavit now filed before this Court, we consider it appropriate to dispose of the Writ Petitions with the following directions. As the petitioner's entitlement under the Final Eligibility Certificate is only for deferment of tax, we see no reason to interfere with the impugned assessment order. It would suffice if respondent Nos.1 and 2 are directed not to take any coercive steps for recovery of the tax due, under the impugned assessment order, for a period of four (4) months from today. The third respondent shall at the earliest put the petitioner on notice, give them an opportunity of being heard, and thereafter pass orders, including on the representations submitted by them, in accordance with law. The entire exercise, culminating in an order being passed by the third respondent and being communicated to both the petitioner and the second respondent, shall be completed within a period of three (3) months from today. As the order of penalty was passed because of the petitioner's failure to comply with the conditions of the Final Eligibility Certificate, which issue is now under consideration of the third respondent, we consider it appropriate to set aside the impugned order of penalty. Suffice it to make it clear that this order shall not preclude the second respondent, if he chooses, from initiating penalty proceedings afresh after orders are passed by the 3rd respondent, and are communicated to him by the third respondent.

Both the Writ Petitions are disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

2nd June 2016

RRB