THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 2439 OF 2017

DATE: 31st OCTOBER 2017

Between:
Sri Ranganatha Swamy Oil Mill,
Muddanur & another

… Petitioners

AND

The Deputy Commercial Tax Officer,
Pulivendula & others.

… Respondents

Counsel for the petitioners : Sri G. Narendra Chetty

Counsel for the respondents : Sri S. Suri Babu,
Special Standing Counsel
for Commercial Taxes (AP)

THE COURT MADE THE FOLLOWING:

O R D E R: (per Hon'ble Sri Justice C.V. Nagarjuna Reddy)

This Writ Petition is filed for issue of *mandamus* declaring initiation of proceedings under the Revenue Recovery Act against the petitioners for recovery of a sum of Rs. 21,13,474/-, as illegal and arbitrary.

In the manner we propose to dispose of the Writ Petition, it is not necessary to record the detailed facts. It would suffice to observe that the petitioners claim to be lessees of M/s Sri Ranganatha Swamy Oil Mill, Muddanur for the year 2001-02. It is their pleaded case that though the mill was taken on lease, the same could not be run and that therefore, the petitioners did not incur any tax liability. The petitioners felt aggrieved by the initiation of proceedings under the Revenue Recovery Act, for recovery of tax and penalty to a tune of Rs.21,13,474/- under the A.P.G.S.T and C.S.T. Acts for the assessment year 2001-02. By order dated 31.01.2017, this Court has granted interim stay of the impugned proceedings.

A detailed counter-affidavit has been filed by the Deputy Commercial Tax Officer, Pulivendula, wherein, it is, *inter alia*, stated that petitioner No.1 is a registered dealer and assessee on the rolls of respondent No.2; that while applying for the registration under the A.P.G.S.T. Act, 1957, petitioner No. 2

declared himself as Proprietor of petitioner No.1 firm, declaring permanent address as Indukur Village, Veerapunayunipally Mandal, Kadapa District with postal address D.No. 5/75, Panchayath Office Road, Muddanur; that for the assessment year 2001-02, best judgment assessment was made levying a tax of Rs.18,68,214/- towards A.P.G.S.T. and Rs.2,45,260/- towards C.S.T., totalling Rs.21,13,474/-. That as the petitioners have not responded to the various notices, best judgment assessment order and notices were sent though Registered Post to the addresses of the petitioners and they were returned undelivered by the postal authorities with endorsements "addressee not residing in the given address and so returned". It is further averred that the Registration Record does not reveal that petitioner No.2 has taken lease of oil mill from any person; that he has taken lease of house bearing D.No.5/78 from the owner of house by name, Sri B. Rajasekhar of Muddanur for a period of one year and that these facts would clearly establish that the plea of the petitioners that the oil mill was taken on lease from one Sri Laxmaiah is totally false.

Along with the counter-affidavit, the respondents have filed assessment order bearing No. 3343/2001-02, dated

03.03.2005 passed by respondent No.2 for a sum of Rs.18,99,600/- towards G.S.T. and a similar assessment order for Rs.2,45,260/- towards C.S.T. Mr. G. Narendra Chetty, learned counsel for the petitioners submitted that his clients have not received those orders.

Mr. Suri Babu, learned Sanding Counsel for Commercial Taxes (Andhra Pradesh) submitted that under the law, the letter addressed through Registered Post Acknowledgment Due to the correct address of the addressee is deemed to have been served and that therefore, the plea of the petitioners that they have not received the assessment orders cannot be countenanced in law. He has further submitted that the entire assessment was made for a period of one month ie. July 2001 on the assessment of turn over of Rs. 4 crores. Learned counsel for the petitioners submitted that it is impossible for an oil mill to achieve a turn over of Rs.4 crores in one month and that on that ground itself, the assessment orders are liable to be set aside.

From the pleadings and prayer in the Writ Petition, it is evident that its scope is confined to the validity of the action of the respondents in initiating proceedings under the Revenue Recovery Act, for recovery of certain amounts found to be due from the petitioners towards tax. It is only after the institution of the Writ Petition that the factum of passing of assessment orders has come to light. Though the petitioners have raised various issues; such as the mill not being run by them, someone applying for waybills impersonating them, etc., having regard to the fact of passing of assessment orders, all these aspects need to be raised before and adjudicated by the Appellate Authority in the appeals to be filed by the petitioners against the assessment orders. Even though the petitioners have pleaded that no prior notice was issued and that the show cause notices and other communications sent by the respondents were not received by them, that, by itself, would not render the assessment orders *void ab initio*. If the petitioners feel aggrieved by the assessment orders, appropriate remedy for them is to file appeals under the A.P.G.S.T. and C.S.T. Acts before the Appellate Authorities. Since the petitioners pleaded that they were not aware of the passing of the assessment orders, we are of the opinion that they deserve an opportunity of challenging the assessment orders on merits instead of non-suiting them on the technical ground of limitation.

Accordingly, the petitioners are permitted to file the appeals. To facilitate filing such appeals, the petitioners are permitted to apply for certified copies of the assessment orders within one week. Within one week thereafter, respondent No.2 shall furnish the certified copies. Within two weeks of receipt of certified copies, the petitioners shall file appeals. Till the appeals are disposed of by the Appellate Authority, in accordance with law, the respondents shall not proceed with recovery of the amounts through the proceedings initiated under the Revenue Recovery Act or otherwise. It is needless to observe that if the petitioners do not file the appeals within the above-stipulated time, the respondents shall be free to proceed further in pursuance of the impugned proceedings.

Subject to the above, the Writ Petition is disposed of. No costs.

As a sequel, W.P.M.P.No.2862 of 2017 filed by the petitioner for interim relief is disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

CHALLA KODANDA RAM, J

31st October 2017

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