THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
&
THE HON'BLE SMT JUSTICE T. RAJANI

WRIT PETITION No.14003 of 2017

DATED: 03.08.2017

Between

Anisetty Satyam.

...PETITIONER

And

The State of Andhra Pradesh, Rep. by its Principal Secretary to Government, Revenue (CT-II) Department, A.P. Secretariat, Velagapudi, Guntur District, A.P. and others.

...RESPONDENTS

COUNSEL FOR THE PETITIONER: MR. P. NARASIMHA RAO

COUNSEL FOR THE RESPONDENT: MR. S. SURI BABU
SPL. STANDING COUNSEL FOR CT

THE COURT MADE THE FOLLOWING:

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
&
THE HON'BLE SMT JUSTICE T. RAJANI

WRIT PETITION No.14003 of 2017

ORDER: (Per Hon'ble Sri Justice V. Ramasubramanian)

The petitioner, who was the Registered Dealer under the A.P. Vat Act, 2005 (for short 'the Act'), has come up with the above writ petition challenging the order of penalty, the order of composition of offence and a show cause notice.

2. Heard Sri. P. Narasimha Rao, learned counsel for the petitioner and Mr. S. Suri Babu, learned special standing counsel for Commercial Taxes.

3. It is seen from the two impugned orders, one relating to penalty under Section 53 (1) and another relating to compounding of offence under Section 61 (1) that the petitioner could not avail of the opportunities given to him. Before passing the impugned orders, show cause notices were issued on 14.09.2015. The petitioner did not file a reply. The petitioner was reminded many times over phone and by special messenger. But he did not file objections. Therefore, the Assessing Officer determined the tax payable at Rs.9,73,350/-. He also imposed penalty to an equivalent amount under Section 53(1) and imposed a compounding fee to the same extent under Section 61(1). Aggrieved by these orders, the petitioner is before us.

4. The main grievance of the petitioner is not as much against the CTO as it is against their own consultant. It appears that the consultant whom the petitioner engaged did not send the reply and did not respond to the notices, resulting in the petitioner landing with these orders. The petitioner claims that they have also closed down

and hence, one opportunity may be given to contest the claim under Section 53(1) and compounding under Section 61(1). Out of the tax amount of Rs.9,73,350/-, the petitioner has already paid a sum of Rs.6,80,000/-. Therefore, we are of the considered view that by directing the petitioner to pay the balance of tax and some portion of the penalty under Section 53(1), he may be given an opportunity to contest the proceedings. This will ensure recovery of some portion of the dues by the department also, while giving an opportunity to the petitioner.

5. Therefore, the writ petition is disposed of to the following effect:

1. The petitioner shall pay a sum of Rs.2,93,350/- towards balance of tax within a period of four (4) weeks.
2. The petitioner shall also pay a further amount of 50% of the penalty levied under Section 53(1), within a further period of eight (8) weeks.
3. Upon the petitioner making the above two payments, the impugned orders will stand set aside.
4. Along with the above payments, the petitioner shall also submit their objection to the proposals.

Thereafter, the assessing officer shall fix a date for personal hearing on which date the petitioner shall positively appear. Thereafter, it is open to the assessing officer to pass fresh orders both under Sections 53(1) and 61(1).

Consequently, pending miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

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V. RAMASUBRAMANIAN, J

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T. RAJANI, J

August 3, 2017/DSK