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

WRIT PETITION NO. 10 OF 2017

DATE: 29th DECEMBER, 2017

Between:
M/s. Obulapuram Mining Company (Private) Limited.

… Petitioner

AND

The State of Andhra Pradesh,
Commercial Tax Department,
Hyderabad and 3 others

… Respondents

Counsel for the petitioner : Sri Rajesh Maddy

Counsel for the respondents : Sri Shaik Jeelani Basha
Special Standing Counsel
for Commercial Taxes Department
(AP)

THE COURT MADE THE FOLLOWING:

O R D E R: (per Hon'ble Sri Justice Challa Kodanda Ram)

This Writ Petition is filed questioning the order dated 01.08.2016 of the 2nd respondent-Deputy Commissioner, Anantapuramu, where under he revised the assessment proceedings passed by the 3rd respondent-Assistant Commissioner, Anantapuramu, on 23.01.2013 under the CST Act.

The petitioner is a company registered under the Companies Act, 1956 (in short "the Act") and it is a registered dealer on the rolls of respondent Nos.2 and 3 under the Andhra Pradesh VAT Act, 2005 and the CST Act, 1956.

The facts, in brief, as stated in the affidavit, are that during the assessment year 2008-09 in relation to certain interstate sales made by the petitioner, it filed CST-VI returns, as required under the CST Act. In the returns, petitioner reported gross turnover of Rs.1459, 58,82,491/- and net turnover at Rs.550,67,24,378/-. Along with the returns, the petitioner furnished interstate sales details together with Form-C declarations, amounting to Rs.549,06,98,837/- and further produced photocopies of commercial invoices and bills of lading in support of their direct export sales, amounting to Rs.838,98,28,397/-. The petitioner claimed turnover to the extent of 550,67,24,378/-, covered by interstate sale of iron ore. However, the petitioner could produce

C-forms only to the extent of Rs.549,06,98,837/-. The 3rd respondent completed the assessment on 23.01.2013 and the petitioner had submitted a letter on 06.07.2010 along with original C-forms and the invoices relating to the year 2008-09. While the things stood thus, in relation to a case registered against the company, the CBI, Hyderabad, called for the original assessment records and other information available with the Department. The Commercial Tax Department had submitted the original records to the CBI while retaining the Xerox copies of the record and C-forms. This aspect was mentioned by the 3rd respondent in his assessment proceedings, dated 23.01.2013.

While the things stood thus, on 19.10.2016, the 2nd respondent received an attachment order from the 4th respondent and for the first time the petitioner came to be aware of the revision order passed by the 2nd respondent on 01.08.2016. It is stated in the affidavit that though the 2nd respondent appeared to have sent notices to the business address of the petitioner i.e., at Survey No.1/P, Obulapuram Village and to its Corporate Office in Bellary, but they were not received by the petitioner company, as the business address was abandoned completely since September, 2011 on account of the prohibitory orders passed by the Court. In those circumstances, no objections were filed by the petitioner and it could not avail the opportunity of personal hearing provided. In the impugned order, the 2nd respondent failed to consider the fact that in the orders of the 3rd respondent it was clearly mentioned that the proceedings were made based on the Xerox copies of the C-forms in relation to the disputed turnovers and thus the petitioner was entitled to avail the concessional rate of duty as applicable. The impugned orders were passed by the 2nd respondent merely on the ground that the petitioner had failed to furnish the original C-forms in relation to the turnovers written in the CST-VI form returns. In those circumstances, the petitioner pleaded that the impugned order is liable to be set aside on the grounds that –

1) it is violative of the principles of natural justice, as the petitioner is deprived of the opportunity of filing objections and of personal hearing; and

2) the 2nd respondent failed to consider the record and appreciate that as a matter of fact, the 3rd respondent had recorded that xerox copies of the C-forms were available in record and that the originals were taken away by the CBI and the same are in the custody of the CBI officials.

A counter affidavit is filed by the 3rd respondent, wherein it has been stated that the 2nd respondent sought clarification from the Commissioner of Commercial Taxes, Hyderabad, whether the concessional rate of tax can be allowed based on the photocopies of the statutory forms since the original 'C' forms were submitted to the CBI and that the Commissioner of Commercial Taxes, Hyderabad, had clarified to take further action on the photostat copies retained by their office. The deponent further stated that as per the assessment file, the authorities of Central Bureau of Investigation, Hyderabad had taken up the investigation in relation to complaints on iron ore trade and called for the original records and other information available on record and that in the process all the records and other related papers available with them were submitted to CBI on 06.07.2010, by retaining the xerox copies thereof. It was further stated that the orders of the Deputy Commissioner revising the orders of the 3rd respondent were given effect to and thus, there is a tax demand to a tune of Rs.58.96 crores, out of which, a sum of Rs.46.43 crores is yet to be paid by the petitioner. Hence, they prayed for dismissal of the Writ Petition.

Having regard to the allegations and finding that the 3rd respondent's counter being vague as to whether original C-forms were submitted or not, this Court directed the learned Government Pleader to produce the original record pertaining to the impugned orders. Having gone through the records, this Court did not find any material except the recitals in the assessment order to the effect that the records were handed over to the CBI office by retaining the xerox copies. Further considering the admitted and undisputed facts that a huge demand of Rs.46.43 crores is raised in the impugned proceedings and further noticing that even as per the original assessment order dated 23.01.2013, there was unsatisfied demand of about Rs.36.59 crores and considering the specific assertion of the petitioner that they did not have opportunity of filing objections before the 2nd respondent, we deem it appropriate to set aside the impugned order and remand the matter to the 2nd respondent to give an opportunity to the petitioner to file their objections to the three revision show cause notices and to satisfy the 2nd respondent that as a matter of fact there were interstate sales, the C-forms were filed and such C-forms satisfy the requirement of CST law. In the process of conducting *de novo* proceedings by the 2nd respondent, he shall also be at liberty to call for the records, to enquire with the CBI and verify with the CBI records whether the original C-forms are available in the record, alleged to have been taken away by the CBI, so as to correlate the transactions with the alleged inter State sale transactions with the records. As the rules provide even for seeking confirmation of issuance of the C-forms, the department is duty-bound to make a proper enquiry, as it is well-settled that the tax demand has to be strictly in accordance with law, as, otherwise, the same would be offending Article 265 of the Constitution of India.

It is needless to mention that the petitioner shall cooperate in all respects and shall be at liberty to put forward all objections as raised in the Writ Petition, which shall be dealt with by the 2nd respondent in accordance with law.

As the matter relates to the assessment proceedings of the year 2013, the entire exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of this order.

Accordingly, this Writ Petition is disposed of. No costs.

As a sequel, W.P.M.P.Nos.10 of 2017 and 545 of 2017 filed by the petitioner for interim relief shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

CHALLA KODANDA RAM, J

29th December, 2017

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