The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice T.Amarnath Goud

Writ Petition Nos.29080 & 29086 of 2017

Dt: 20-11-2017

WP.No.29080/17

Between:

M/s.Sri Dhanyalakshmi Trading Company
Punganur, Chittoor District
Rep. by its Proprietor V.Palani

....Petitioner

and

The Commercial Tax Officer
Madanapalle, Chittoor District and another

....Respondents

Counsel for the Petitioner: **Mr.G.Narendra Chetty**

Counsel for the respondents: **Mr.S.Suri Babu,**
Spl.SC for Commercial Taxes (AP)

The Court made the following:

Common Order: **(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)**

Since the parties in both these Writ Petitions are common and the issues raised therein are interrelated, they are heard and being disposed of together.

The petitioner- Company is a registered fertiliser dealer. Incidentally, it has also leased out four buses to the Andhra Pradesh State Road Transport Corporation (for short 'the APSRTC') and was receiving hire charges from the assessment year 2013 onwards. It is not in dispute that, as a fertiliser dealer, the petitioner was filing its returns. As regards the hire charges received from hiring of the buses to APSRTC, it is the pleaded case of the petitioner that till the month of June, 2016, the APSRTC has not treated the said charges as assessable income and accordingly, it has not deducted the TDS and that from the following month onwards, it has started deducting the TDS on the hire charges paid to the petitioner. On 13-06-2017, respondent No.1 has visited the premises of the petitioner, allegedly, for audit purpose. He has, later on, passed the assessment order *vide* A.O.No.73049, dated 30-06-2017, both in respect of certain turn overs pertaining to the fertiliser business allegedly not included in the petitioner's turn overs and also in respect of the hire charges paid by the APSRTC from the assessment year 2013-2014. A sum of Rs.54,43,743/- was proposed to be levied on the petitioner as tax.

Respondent No.1 purported to have issued show cause notice, dated 19-06-2017, before passing the impugned order. In the impugned assessment order, he has referred to an alleged consent letter, dated 29-06-2017, of the proprietor of the petitioner agreeing to pay the entire tax of Rs.54,43,743/- on his free will and consent and without being under undue influence, fear, threat or coercion. Accordingly, after deducting a sum of Rs.12,46,084/- already paid by the petitioner towards tax for the period from 2013-2014 to 2017-2018, a sum of Rs.41,97,659/- was shown as the balance tax due. On the same day, respondent No.1 has passed a separate assessment order *vide* A.O.No.75174, dated 27-07-2017, wherein he has imposed a penalty of Rs.54,43,743/-, which constitutes 100% of the tax assessed on the petitioner.

Assailing both the above assessment orders, the petitioner filed these two Writ Petitions.

Mr.G.Narendra Chetty, learned Counsel for the petitioner, seriously questioned the propriety of respondent No.1 in passing the impugned assessment orders. He has submitted that taking advantage of lack of proper education and legal knowledge of the proprietor of the petitioner, respondent No.1 has taken his signature on a statement already prepared in English, with which he does not have proper acquaintance, and that without understanding its contents, he has signed on it as if he has agreed to pay the differential tax amount as well as the penalty amount. The learned Counsel has, accordingly, submitted that both the impugned orders are vitiated by patent illegalities, arbitrariness, malice and deceit.

The learned Counsel further submitted that respondent No.1 has also committed a serious procedural illegality in mixing up the hire charges paid by the APSRTC with the turn overs on the fertiliser business till June, 2016, and that for the first time, APSRTC has deducted TDS on the hire charges. He has further submitted that under Section 21 (4) of the Andhra Pradesh Value Added Tax Act, 2005 (for short 'the Act'), limitation for making an assessment is four years from the end of the period for which the assessment is made and that the months of April and May of 2013 fall outside the period of 4 years and assessment to this extent is barred by limitation as prescribed under the aforementioned provision.

Mr.S.Suri Babu, learned Special Standing Counsel for Commercial Taxes (AP), strongly opposed the above submissions with reference to the contents of the counter-affidavits and submitted that the petitioner, having accepted its liability to pay the differential tax and penalty, has turned round as an after thought to avoid its liability as such. He has further submitted that the question, whether the petitioner has voluntarily agreed to pay the differential tax and penalty or not falls in the realm of a disputed fact, which cannot be adjudicated in Writ Petitions. Similarly, he has also submitted that respondent No.1 has not committed any procedural violation in making assessment in respect of hire charges issued to the petitioner as, being a proprietary concern, a common assessment in respect of its turn overs pertaining to hire charges as well as fertiliser business could be made.

As regards the aspect of limitation, the learned Special Standing Counsel has fairly conceded that the assessment in respect of the months of April and May, 2013, is barred by limitation under Section 21 (4) of the Act.

We have carefully considered the submissions of the learned Counsel for the parties.

As regards the plea of the petitioner that its proprietor had affixed his signature on a statement prepared in English without knowing its contents, as rightly submitted by the learned Special Standing Counsel, this issue falls in the realm of a disputed question of fact. It is trite that this Court, while exercising its jurisdiction under Article 226 of the Constitution of India, would not embark upon adjudication of disputed questions of fact. We are, therefore, of the opinion that the appropriate remedy for the petitioner is to avail the remedy of appeal available to it under the provisions of the Act, for adjudication on merits based on the material on record and the facts and circumstances of the case. Similarly, the issue of correctness or otherwise of the procedure followed by respondent No.1 in making common assessment in respect of the turn overs pertaining to hire charges as well as fertiliser business also needs to be raised in the appeals. We, therefore, refrain from expressing our conclusive opinion on both these aspects.

Coming to the plea of limitation, under Section 21 (4) of the Act, an assessment can be made within a period of four years from the end of the period for which assessment has to be made. Admittedly, the months of April and May, 2013, fall outside this period and therefore, assessment of both the tax and penalty to this extent is liable to be and is, accordingly, set aside.

The learned Counsel for the petitioner submitted that as his client was pursuing the remedy of Writ Petitions, he could not file the appeals within the period of limitation. He has also submitted that so far, his client has paid an amount of around Rs.16 lakhs out of the tax determined for the assessment years 2013-2014 to 2017-2018 and that as his client is seriously disputing the finding of respondent No.1 that he has voluntarily and without any coercion or undue influence agreed to pay the tax and penalty, it would be wholly iniquitous to enforce the demand of tax and penalty pending the appeal.

While relegating the petitioner to the remedy of appeal solely on the ground that disputed questions cannot be effectively adjudicated in Writ Petitions, we, however, feel that the purported conduct of the Proprietor of the petitioner in readily agreeing for payment of differential tax and penalty unconditionally appears to be somewhat strange and peculiar. This apart, the petitioner also claimed to have paid an amount of around Rs.16 lakhs towards the tax assessed under the impugned order in WP.No.29080 of 2017. In these facts and circumstances of the case, we find merit in the submission of the learned Counsel for the petitioner that recovery of amount towards the balance tax due and penalty would cause serious prejudice to the interests of the petitioner before its appeal is adjudicated. Accordingly, in the facts and circumstances of the case, we permit the petitioner to file appeal (s) against the assessment of tax as well as penalty within 4 weeks from today. If such appeals are filed before the first appellate authority within the time stipulated above, respondent No.1 is restrained from enforcing the impugned orders for recovery of penalty and the balance tax due till disposal of those appeals. It is needless to observe that the petitioner's liability to pay these amounts shall be subject to the outcome of such appeals.

Both the Writ Petitions are, accordingly, partly allowed to the extent of the months of April and May, 2013 and disposed of subject to the observations made and directions given hereinbefore as regards all other aspects.

As a sequel, Miscellaneous Petitions, pending if any, stand disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

Date: 20-11-2017
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