HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE MS. JUSTICE J. UMA DEVI

Writ Petition Nos.15888 and 44521 of 2016

COMMON ORDER: (*per Hon'ble Sri Justice V. Ramasubramanian*)

The petitioner has come up with these writ petitions, challenging an order of assessment passed after an audit under AP VAT Act, 2005 (for short 'the Act') and an order of penalty passed as a consequence.

2. Heard Sri M.V.J.K. Kumar, learned counsel for the petitioner and Sri Shaik Jeelani Basha, learned special standing counsel for the respondents.

3. On 02.07.2015 an audit of the firm of the petitioner/ dealer was conducted by the Assistant Commissioner (CT). Though in the course of audit, it was found that what was reflected in the books of accounts tallied with what was indicated in the returns, for the periods 2014-15 and 2015-16, both in relation to purchase and in relation to sales, the audit found that the petitioner was storing their goods in the A.P. State Warehousing Corporation go down. Therefore, presuming that the stock stored in the said go down, had not been included in the purchase or sales, a show cause notice dated 24.09.2015 was issued. Though, the petitioner filed their objections and appeared in person and contended that the stock held in the go down of the Warehousing Corporation was a tax paid stock already included in the turn over, the Assessing

Officer rejected the same and passed an order dated 31.12.2015 demanding tax to the tune of Rs.1,40,760/-.

4. Subsequently, the Assessing Officer also issued a notice for imposition of penalty under Section 53(3) of the Act and passed an order dated 15.03.2016 demanding a penalty to the tune of 100% of the tax. Challenging the order of assessment as well as order of penalty, the petitioner is before us.

5. In so far as the order of assessment is concerned, the petitioner has had an alternative remedy of appeal. The petitioner does not allege violation of natural justice or lack of jurisdiction so as to bypass the alternative remedy of appeal. As a matter of fact, the tax has been paid and the petitioner came up first with a writ petition challenging only the penalty. It is only subsequently that he came up with the second writ petition challenging the order of assessment. Therefore, we are not convinced that the second writ petition challenging the order of assessment can be entertained. Hence, the second writ petition i.e., WP No.44521 of 2016 is dismissed.

6. In so far as the first writ petition is concerned, the challenge lies in a very narrow compass. 100% penalty is demanded under Section 53(3) of the Act. Either of the two conditions prescribed under Section 53(3) of the Act should have been satisfied for levy of 100% penalty. The petitioner should either be guilty of fraud or guilty of willful neglect. In the case on hand, storage of goods of the petitioner was with a State owned

Warehousing Corporation. It is not with any private go down, which could not come to light to the competent authorities. The positive claim of the petitioner is that the stock register maintained by the Warehousing Corporation, contained the details of the stock. Therefore, merely because the petitioner has not properly maintained the stock register, the same cannot lead to a presumption that the turn over was not included. Unfortunately, the petitioner allowed the order of assessment to attain finality, without challenging the same on a statutory appeal.

7. In such circumstances, we are of the considered view that no fraud or willful neglect could be attributed to the petitioner. Hence, the first writ petition i.e., WP No.15888 of 2016 is allowed and the order of penalty is set aside. There shall be no order as to costs. Pending miscellaneous applications, if any, in these writ petitions, shall stand closed.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

Date: 07.02.2017
BSS

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HON'BLE MS. JUSTICE J. UMA DEVI

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(*per Hon'ble Sri Justice V. Ramasubramanian)*

Date: 07.02.2017

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