THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.36908 of 2017

06.11.2017

Between:

M/s.Srivin Food Products,
Reddygudem, Guntur District

..Petitioner

and

State of Andhra Pradesh,
represented by its Principal Secretary,
Commercial Taxes Department,
Guntur and others

..Respondents

Counsel for the petitioner: Mr.G.Vasantha Rayudu

Counsel for the respondents: Mr.Shaik Jeelani Basha,
Special Standing Counsel for Commercial Taxes (A.P.)

The Court made the following:

ORDER: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This writ petition is filed for a *mandamus* to declare the action of the respondents in issuing demand notice in *Form*-4 under the Andhra Pradesh Revenue Recovery Act, 1864 (for short 'the Act') for payment of Rs.35,76,983/- as illegal and arbitrary.

2. The petitioner is a registered VAT and CST assessee engaged in the manufacture and selling of ice creams. The Deputy Commercial Tax Officer, Kothapet Circle, Guntur District, after auditing the books of the petitioner, issued VAT 305 orders in AAO No.7775, dated 14.02.2013, for the period from July, 2010 to July, 2012 and thereafter, respondent No.3, has undertaken reassessment for the period from 2011-12 to 2013-14. After issuing notices, including the revised show cause notice, dated 17.11.2016, respondent No.3 issued proceedings in A.O.48740 TIN:37626990705/SA-I/2015-16, dated 02.01.2017, assessing the tax due on sale suppressions at Rs.30,73,035/- and after disallowing the input claim as the petitioner allegedly not submitted any tax invoices before the assessing authority, he assessed the total tax due at Rs.35,76,983/-.

3. As the petitioner has neither paid the tax assessed by respondent No.3 nor filed an appeal, one of the respondents has initiated proceedings under the Act for recovery of the tax due. Feeling aggrieved by initiation of these proceedings, the petitioner has filed this writ petition.

4. The petitioner pleaded that due to the communication gap between itself and its auditor, it could not avail the remedy of appeal

within the stipulated time and that it intends to file appeal, but the same is now time barred.

5. After hearing Mr.G.Vasantha Rayudu, learned counsel for the petitioner, and Mr.Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes (A.P.), we are of the opinion that the correctness or otherwise of the re-assessment order made by respondent No.3 needs to be adjudicated in the appeal available to the petitioner under the Andhra Pradesh Value Added Tax Act, 2005. Therefore, it is appropriate to relegate the petitioner to the remedy of appeal. However, as the petitioner has pleaded imminent threat of recovery of the tax due by sale of the properties attached under the Act, we deem it just and proper to stay the revenue recovery proceedings for a reasonable period subject to placing the petitioner on certain terms.

6. Accordingly, impugned proceedings, dated 02.01.2017, for recovery of the tax assessed by respondent No.3 are stayed subject to the petitioner depositing to the credit of respondent No.3, 50% of the tax demanded within a period of six weeks from today. The petitioner is permitted to file a statutory appeal within the said stipulated time. On such appeal being filed and on proof of the payment of the amount as directed above along with the appeal, the appellate authority shall entertain and adjudicate the same on merits. The stay of recovery of demanded amount subject to the above condition shall continue till disposal of the appeal.

7. Subject to the above directions, the Writ Petition is disposed of.

8. As a sequel to disposal of the writ petition, W.P.M.P.No.45829 of 2017 filed by the petitioner for interim relief shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

CHALLA KODANDA RAM, J

06th November, 2017

GHN/MSB