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

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

W.P.No.37411 of 2017

Date: 24.11.2017

Between:

M/s.Veeramanchineni Surendra Babu,
rep. by its Proprietor
Mr.V.Surendra Babu,
Door No.11-31, Rythupet,
Nandigama – 521 185, Krishna district … Petitioner

And

Commercial Tax Officer,
Nandigama Circle, Vijayawada
and two others … Respondents

Counsel for the Appellant : Mr. Sudhakar Reddy for Mr.S.Dwarakanath

Counsel for the Respondents : Mr.S.Suri Babu, Special Standing Counsel for Commercial Tax(AP)

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 set aside the Form No.4 dated 27.10.2017, issued by respondent No.2 for recovery of a sum of Rs.1,81,21,351/- under the A.P. Value Added Tax Act (for short 'the Act') for the assessment years 2006-07, 2007-08 and 2008-09.

2. Briefly stated, the facts are that, for the assessment years 2006-07 and 2008-09, an assessment order was passed on 01.01.2009 in respect of the sand quarry operations undertaken by the petitioner. Appeal filed against the said assessment order was allowed by the Appellate Deputy Commissioner and the case was remanded by his order dated 27.02.2009. On 19.09.2014, fresh assessment order was passed. Assailing the said order, the petitioner has filed W.P.No.25926 of 2014. By order dated 19.09.2014, this Court admitted the writ petition and granted a conditional interim order of stay of recovery of the disputed tax, subject to the petitioner paying Rs.14 lakhs, within three weeks. The petitioner had not complied with the said order for a long time. On 11.09.2017, the said amount was paid by the petitioner. A miscellaneous application was filed in W.P.No.25926 of 2014 by the petitioner, for extension of time for payment of the said amount. By order dated 11.10.2017, passed in the said application filed in W.P.No.25926 of 2014, this Court has extended time for payment.

3. On 27.10.2017, the impugned proceedings were issued for recovery of the amount of Rs.1,81,21,351/-. As noted herein before, assailing these proceedings, the petitioner has filed this writ petition.

4. At the hearing, Mr.S.Suri Babu, learned Special Standing Counsel for Commercial Tax (AP), on instructions, submitted that the amount demanded under the impugned proceedings comprises three components, namely; the tax component which is subject matter of W.P.No.25926 of 2014, penalty on the said tax component and, the amount due and payable under revised assessment order in respect of the assessment year 2007-08.

5. Mr.Sudhakar Reddy, learned counsel representing Mr.S.Dwarakanath, learned counsel for the petitioner, submitted that as regards the tax component for the years 2006-07 and 2008-09, since this Court on 11.10.2017, has condoned the delay in payment, the respondents are not entitled to collect the same, pending the said writ petition. He has further submitted that his client has not received any proceedings, either levying the penalty on the tax for the assessment years 2006-07 and 2008-09 or the purported revised assessment order for the assessment year 2007-2008. Mr.S.Suri Babu, however, submitted that the penalty was imposed vide proceedings dated 15.03.2017, a copy of the same was accordingly sent to the petitioner's address through registered post with acknowledgment on 16.03.2017, that the same was returned by the postal authorities with

the endorsement "No such person in this Door No. H/R". On perusal of the address on the registered cover, the learned counsel for the petitioner admitted that it was the same address in which the petitioner is living and that he does not know the reason why the postal authorities have returned the postal cover without serving on his client.

6. As regards the revised assessment order for the assessment year 2007-08, the learned Special Standing Counsel submitted that the said order was passed as far back as October, 2009, and copy of the said order was also sent to the petitioner's address and the same was returned by the postal authorities with a similar endorsement as made on the postal cover pertaining to the penalty order.

7. The facts recorded above would reveal that the tax component for the years 2006-07 and 2008-09, is subject matter of W.P.No.25926 of 2014 and with the extension of time granted by this court on 11.10.2017, for depositing of the sum of Rs. 14 lakhs, the interim order stands revived and, therefore, the respondents are not entitled to recover the balance tax due for the said two assessment years till disposal of W.P.No.25926 of 2014. With regard to the penalty and tax due under re-assessment order for the assessment year 2007-08, the petitioner has to avail appropriate legal remedies, if he feels aggrieved thereby. To facilitate availment of such remedies, respondent No.2 is directed to furnish authenticated copies of the

orders, on the petitioner approaching him within two weeks. On receipt of such orders, the petitioner shall be free to avail his legal remedies.

8. In the result, the writ petition is partly allowed to the extent of the demand of balance tax due for the years 2006-07 and 2008-09, while dismissing the writ petition in respect of the balance demand, subject to the right of the petitioner to avail appropriate legal remedies. As a sequel, W.P.M.P.No.46466 of 2017 filed by the petitioner for interim relief is disposed of.

(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

Date: 24th November, 2017

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