HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.12984 of 2017

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Heard Sri G.Narendra Chetty, learned Counsel for the petitioner, and Sri Sk.Jeelani Basha, learned Special Standing Counsel for Commercial Taxes and, with their consent, the Writ Petition is being disposed of at the stage of admission.

After arguing for some time, Sri G.Narendra Chetty, learned Counsel for the petitioner, would submit that it would suffice if this Court were to examine the power of the assessing authority to pass an order of penalty, under Section 53(3) of the A.P. Vat Act, 2005 (Act), since no finding was recorded by the revisional authority, in his revisional order, that either fraud had been committed or there was willful neglect on the petitioner's part.

In his revisional order dated 31.08.2015, the Deputy Commissioner (CT), Kurnool, observed that the dealer's objections were verified with reference to VAT purchases and P&L account turnovers; the objections filed by the assessee were not satisfactory since the P&L account clearly showed variation when compared to VATIS; they did not file documentary evidence to establish that the purchases were from out of State; they neither disclosed the non-creditable purchases in their returns upto 20.10.2012, nor were revised returns filed within six months; and their objections were not tenable. The revision show cause notice was confirmed for a sum of Rs.2,00,417/-. Thereafter, a penalty show cause notice was issued to the petitioner, on 04.03.2016, by the Commercial Tax Officer, and an order of penalty was passed on 10.02.2017 levying 100% penalty on the petitioner of Rs.2,00,417/-. It is this order of penalty which is questioned in this Writ Petition.

Section 53 of the A.P.Vat Act, 2005 (Act) relates to Penalty for failure to declare the tax due. Under sub-section (1), where any dealers had under declared tax, where it is not established that fraud or willful neglect has been committed and where under declared tax is (i) less than ten percent of the tax, a penalty shall be imposed at ten percent of such under-declared tax; (ii) more than ten percent of the tax due, a penalty shall be imposed at twenty five percent of such under-declared tax. Under Section 53(3), where any dealer who had under declared tax, and where it is established that fraud or willful neglect had been committed, he shall be liable to pay penalty equal to the tax under declared, besides being liable for prosecution.

Both Sub-sections (1) and (3) of Section 53 of the Act apply only in cases where the dealer has under declared tax. The distinction between Section 53(1) and 53(3) of the Act is that, in the former, fraud or willful neglect need not be established while, in the latter, fraud or willful neglect must be established.

As noted hereinabove, the Deputy Commissioner (CT), Kurnool in his revisional order dated 31.08.2015, while holding that the petitioner had under declared tax, has however not held that such under declared tax was because of fraud or willful neglect. In the absence of any such finding having been recorded by the revisional authority, in his revisional order, the assessing authority could not have initiated penalty proceedings under Section 53(3) of the Act. He could only have exercised power, to impose penalty, under Section 53(1) of the Act.

In the absence of any finding having been recorded by the revisional authority, in his revisional order dated 31.08.2015, of the petitioner having committed fraud or willful neglect, the impugned order of penalty, passed under Section 53(3) of the Act, is without jurisdiction and is liable to be and is, accordingly, set aside. Suffice it to make it clear that the order passed by us shall not disable the assessing authority, if he so chooses, to initiate proceedings under Section 53(1) of the Act.

The Writ Petition is, accordingly, allowed. Miscellaneous Petitions pending, if any, shall also stand disposed of. However, in the circumstances, without costs.

RAMESH RANGANATHAN, J

KONGARA VIJAYA LAKSHMI,J

Date: 16.08.2018
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