THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION NO.8078 OF 2018

ORDER: (per SK,J)

The prayer of the petitioner company in this case reads as under:

> 'For the reasons stated in the accompanying affidavit, it is therefore prayed that this Hon'ble Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ, Order or Orders, Direction or Directions to declare the action of the 3rd respondent in bringing the turnover of the petitioner in the nature of 100% export sales during the period 2012-2015 to tax under the T.G.VAT Act, 2005 vide assessment order dated 30.05.2016 as illegal, arbitrary and unconstitutional and to set aside the same and to direct the 3rd respondent not to proceed in any manner against the petitioner for recovery of the tax and penalty amounts under the said assessment order, and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.'

It appears that the Deputy Commercial Tax Officer-II, Sanga Reddy Circle, the third respondent herein, issued show-cause notices time and again to the petitioner company in relation to its assessment under the Telangana Value Added Tax Act, 2005 (for short, 'the Act of 2005'), but the petitioner company failed to respond.

Sri Vedula Srinivas, learned counsel for the petitioner company, would state that the Managing Director of the petitioner company vacated his house at 136, HIG, BHEL, Ramachandrapuram, Medak District, in which the registered office of the petitioner company was situated, but the aforestated show-cause notices were sent to the same address.

In any event, as the petitioner company failed to come before him, the Deputy Commercial Tax Officer-II, Sanga Reddy Circle, opined that since the petitioner company did not submit its books of accounts in proof of the turnover being attributable to exports only, it would be liable to assessment. He accordingly passed assessment order dated 30.05.2016 holding the petitioner company liable to pay tax for the assessment years 2012-13, 2013-14 and 2014-15. The net amount of tax due from the petitioner company was quantified at Rs.19,29,513/-. Separate penalty proceedings were initiated against the petitioner company resulting in levy of penalty to the tune of Rs.4,82,378/-. Pursuant thereto, the Deputy Commercial Tax Officer-II, Sanga Reddy Circle, issued garnishee order dated 21.02.2018 to the Indian Bank, Serilingampally Branch, the fourth respondent herein, requiring it to make the payment of the aforestated total due amount of Rs.24,11,891/- from the account of the petitioner company in its branch. It is at this stage that the petitioner company approached this Court.

Sri Vedula Srinivas, learned counsel, would contend that in relation to the very same turnover, which is the subject matter of the assessment under the Act of 2005, the Commercial Taxes Department of the State of Telangana issued a show-cause to the petitioner company under the Central Sales Tax Act, 1956, and the entire income has been treated as relatable to export turnover exempt from central sales tax.

Sri J.Anil Kumar, learned special standing counsel for Commercial Taxes, State of Telangana, would however dispute this and state that in so far as the assessment year 2013-14 is concerned, the petitioner company was held liable to pay tax to the tune of Rs.9,08,993/-. He would further state that all the show-cause notices were hand delivered at the very same address which is now sought to be disclaimed by the petitioner company. The original record is produced in proof of such delivery and we find that the stamp of the petitioner company was affixed on each such notice. Sri Vedula Srinivas, learned counsel, would submit that it is possible that the watchman available at the premises may have affixed the stamp but in reality, the petitioner company was not at all aware of the assessment proceedings undertaken under the Act of 2005.

The aforestated facts would demonstrate that, be it for whatever reason, the petitioner company failed to go before the assessing authority, the Deputy Commercial Tax Officer-II, Sanga Reddy Circle, and produce its books of accounts in proof of the entire turnover being relatable to exports only. As this stand of the petitioner company seems to have been accepted to a great extent in so far as Central Sales Tax is concerned, we are of the opinion that the interest of justice requires the petitioner company being given one more opportunity, notwithstanding the fact that the Commercial Taxes Department scrupulously followed the procedure in delivering each and every show-cause notice issued by it earlier.

Though Sri J.Anil Kumar, learned counsel, would contend that levy of penalty ought not to be interfered with as a separate writ petition should have been filed in relation thereto, we are not persuaded to agree. The writ petition, as framed, is directed against the total due amount of Rs.24,11,891/- which would also include the penalty component. It is also not in dispute that this penalty was consequential to the subject assessment and the failure of the petitioner company to produce its books of accounts.

We therefore set aside the assessment order dated 30.05.2016 and also the penalty proceedings dated 26.08.2016 issued thereafter. The petitioner company shall produce all its books of accounts before the Assessing Officer-Deputy Commercial Tax Officer-II, Sanga Reddy Circle, the third respondent, within two weeks from today. It would be open to the Assessing Officer to call upon the petitioner company to furnish any additional material or documents as deemed fit. After considering the same, the third respondent shall pass fresh assessment orders in relation to the subject assessment years 2012-13, 2013-14 and 2014-15. No further measures shall be taken pursuant to the garnishee order dated 21.02.2018 which shall stand set aside by virtue of the foundational assessment order having been set aside.

The writ petition is allowed to the extent indicated above. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

M.GANGA RAO,J

Date:28.03.2018

GJ