***IN THE HIGH COURT OF JUDICATURE AT HYDERABAD**
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE P. KESHAVA RAO

<u>+ WRIT PETITION No.14452 OF 2017</u>

% Date:13.12.2018

Between:

\# M/s. Bhaskara Fertilizers Limited,
Ananthapur, A.P., Rep. by its Director.

… Petitioner

v.

$ The Commercial Tax officer (I/C) (Audit),
Ananthapuram, A.P., and others.

.. Respondents

! For Petitioner : Mr. M.V.J.K. Kumar

^ For Respondents : Mr. Shaik Jeelani Basha
Special Standing Counsel.

< Gist :

> Head Note :

? Cases Referred : Nil

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AND

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WRIT PETITION No.14452 OF 2017

ORDER: ***(Per V. Ramasubramanian, J)***

Aggrieved by an order of penalty passed under Section 53 (1) read with 55 (2) of the Andhra Pradesh Value Added Tax Act, 2005, the Dealer has come up with the above writ petition.

2. Heard Mr. M.V.J.K. Kumar, learned counsel for the petitioner and Mr. Shaik Jeelani Basha, learned Special Standing Counsel for the respondents.

3. Though the petitioner has an alternative remedy of appeal, as against the impugned order, he has chosen to come up with the writ petition, on the ground (1) that there was violation of the principles of natural justice and (2) that the levy is unauthorized by law.

4. But, it appears from the impugned order that the petitioner was given adequate opportunity, both to show cause against the proposal and to appear personally and advance arguments. The contention of Mr. M.V.J.K. Kumar, learned counsel for the petitioner is that several serious contentious issues raised by the petitioner in their reply were simply extracted in the impugned order, but were not discussed. This is how the ground of violation of principles of natural justice is sought to be projected.

5. It is true that the Assessing Officer has extracted the entire objections by copying and pasting them in the impugned order, but he

did not stop with that. The Assessing Officer also dealt with the objections in brief.

6. Where the objections are dealt with in brief and where one or two objections are left out of being considered, the case would not fall under the category of violation of principles of natural justice. Therefore, the first ground on which the alternative remedy is sought to be bypassed cannot be upheld.

7. On the second ground, the learned counsel for the petitioner raises two contentions, namely, (1) that once the purchases and sale invoices are found to be false, there cannot be a tax liability and consequently, there cannot be a liability to pay penalty and (2) that the penalty in any case cannot exceed 200%.

8. It is seen from the impugned order that the Assessing Officer came to the conclusion that the petitioner was guilty of producing false invoices without actual movement of goods. This finding was arrived at by the Assessing Officer, on the basis of the facts (a) that both the sales and purchase invoices were of the same date and (b) that there was no actual movement of goods. This factual finding, cannot be assailed before this Court. The argument that no penalty would flow out of a false invoice cannot be accepted for the reason that the language employed in Section 55 (2) of the Act is very clear. Section 55 (2) of the Act states that any VAT Dealer, who issues a false tax invoice or receives and uses a tax invoice, knowing it to be false, shall be liable to pay a penalty of 200% of tax shown on the false invoice. The expression used in Section 55 (2) of the Act is "tax

shown on the false invoice". Therefore, it is not relatable to the actual turn over but the tax as shown in the false invoice. Hence, the contention that so long as the invoices are found to be false, there can be no tax liability and consequently there can be no liability to pay penalty, does not hold good. From out of a false invoice no tax liability may arise but liability to pay penalty may arise under Section 55 (2) of the Act. Therefore, the first contention is liable to be rejected.

9. The second contention is that the penalty has now been imposed at 400%, which is more than what is prescribed by statute. But a reading of the provision shows that the penalty is relatable to every tax invoice. Unfortunately, for the petitioner he has produced two sets of tax invoices, one relating to purchase and another relating to sale. Therefore, every tax invoice attracted a penalty of 200%, which ultimately, totaled to 400%. Therefore, the said contention is also liable to be rejected.

10. Accordingly, the writ petition is dismissed. We take note of the fact that insofar as the penalty under Section 55(1) and 55(3) of the Act are concerned, the matter has already been remanded back and the same shall be independently considered.

As a sequel thereto, miscellaneous petitions, if any pending, shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

December 13, 2018
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