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

* HONOURABLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
* HONOURABLE SRI JUSTICE P. KESHAVA RAO

+W.P.No.44990 of 2018

% Date: 19-12-2018

#Between:

M/s. Reshma Steel Traders,
D.No.16-2/12, Parigi Road,
Hindupur, Anantapuram District,
Rep. by its Proprietor M.A. Gafoor,
S/o. Late Abdul Kuddus.

….. Petitioner

And

1. The State of Andhra Pradesh, rep. by its Principal Secretary, Revenue (CT-I) Commercial Tax Department, Secretariat, Velagapudi, Guntur District.
2. 2. The Special Deputy Commissioner, O/o. Commercial Tax Officer, Circle-II, Hindupur, Anantapur District.
3. The Commercial Tax Officer, Commercial Tax Office, Hindupur, Anantapur District.

…. Respondents

! Counsel for the Petitioner : Mr. Md. Saleem

^ Counsel for Respondents 1 & 2 : Mr. Shaik Jeelani Basha Spl. S.C.

< GIST:

> HEAD NOTE:

? Cases referred

HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HONOURABLE SRI JUSTICE P. KESHAVA RAO

W.P.No.44990 of 2018

ORDER: (Per VRS,J)

The petitioner, who is a dealer under the A.P. VAT Act, 2005, has come up with the above writ petition challenging an order of penalty passed under Section 53 of the Act.

2. Heard Mr. Md Saleem, learned counsel for the petitioner and Mr. Shaik Jeelani Basha, learned Special Standing Counsel for the Department.

3. The petitioner is a registered dealer under the A.P. VAT Act. An audit was conducted for the period from April 2014 to June 2016 and the dealer declared certain turnovers in Form-200. On the basis of the records produced during the audit, the correctness of the returns filed by the dealer was verified. It was found that there was suppression of stock, and hence a show cause notice was issued. The dealer accepted to pay the tax as proposed. Therefore, the tax was confirmed.

4. Thereafter, the respondent issued a proceeding under Section 53 and imposed 100% penalty. Aggrieved by the same, the dealer is before this Court.

5. Under Section 53(1), the dealer who is guilty of under declaration of tax, is liable to be imposed with a penalty of 10% of the under declared tax, if the under declared tax is less than 10% of the tax. If the under declared tax is more than 10% of the tax due, the penalty may be 25% of such under declared tax.

6. However, no penalty shall be imposed, if prior to the detection of under declaration, the dealer declares the tax due and he pays the same along with interest. However, if a dealer, who has under declared tax, was

also guilty of fraud and willful neglect, he is liable to pay penalty equal to the tax.

7. Therefore, Section 53 contemplates three different contingencies, viz., (1) whether the dealer is guilty of under declaration, but not of fraud or willful neglect; (2) where the dealer is guilty of under declaration as well as fraud and willful neglect; and (3) where a dealer declares tax and pays it along with interest before the detection of under declaration.

8. In the impugned order it is not even stated as to the category under which the case of the petitioner would fall. The question whether the case of the petitioner would fall under Section 53(1) (i) or whether it will fall under Section 53 (1) (ii) or whether the case would fall under Section 53 (3) is not even whispered in the impugned order. Therefore, the impugned order is vitiated by non-application of mind and is liable to be set aside.

9. Accordingly, the writ petition is allowed and the impugned order is set aside. The matter is remanded back to the 3rd respondent for fresh adjudication in accordance with law. The adjudication shall be after giving an opportunity to the petitioner. There will be no order as to costs.

10. As a sequel, pending miscellaneous petitions, if any, shall stand closed.

____
V. RAMASUBRAMANIAN, J.

____
P. KESHAVA RAO, J.

19th December, 2018
Js.

HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HONOURABLE SRI JUSTICE P. KESHAVA RAO

W.P.No.44990 of 2018

19th December, 2018

Js.