THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
&
THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

WRIT PETITION No.2419 of 2019

ORDER: (Per Hon'ble Sri Justice V. Ramasubramanian)

Challenging an urgent notice issued by the Assistant Commissioner (State Tax) for the recovery of tax and penalty allegedly due, pursuant to orders of assessment, the dealer under the Telangana Value Added Tax Act, 2005 (for short 'the Act') has come up with the above writ petition.

2. Heard Mr. K. Srinivasa Rao, learned counsel for the petitioner and Mr. J. Anil Kumar, learned special standing counsel for the respondents.

3. The petitioner suffered orders of assessment dated 08.06.2016, for the period April 2011 to January 2016. As a consequence, an order of penalty was also passed on 05.11.2016.

4. The order of assessment as well as the order of penalty was challenged by the petitioner before the Appellate Deputy Commissioner. The Appellate Deputy Commissioner allowed the appeals by order dated 23.06.2017 and set aside the orders and remanded the matter back to the Assessing Officer for a fresh consideration, in the light of Section 21(5) of the Act, which provides for extended period of limitation.

5. As against the orders of remand passed by the first appellate authority, the petitioner filed two appeals in TA.Nos.153 and 154 of 2017 before the Telangana VAT Appellate Tribunal.

Pending appeals, the petitioner also sought stay of all further proceedings in TMP.Nos.59 and 60 of 2017. The tribunal granted stay of all further proceedings by order dated 02.02.2018.

6. However, by the impugned urgent notice, the Assistant Commissioner directed the petitioner to pay tax and penalty as determined in the orders dated 08.06.2016 and 05.11.2016. Hence, the present writ petition.

7. The moment the orders of assessment dated 08.06.2016 and the order penalty dated 05.11.2016 are set aside by the appellate authority, there is nothing for the Assessing Officer to make a demand. Therefore, the impugned urgent notice, as though the order of assessment and order of penalty are now in force, is completely wrong. They have been set aside and the matter remanded back. After remand, the Assessing Officer is unable to proceed further due to the stay of further proceedings granted by the appellate tribunal. Therefore, the impugned urgent notice is liable to be set aside.

8. Accordingly, the writ petition is allowed and the impugned notice is set aside. It will be open to the department to take any steps for getting the stay vacated or to have the appeals decided finally.

Consequently, pending miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

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V. RAMASUBRAMANIAN, J

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Dr. SHAMEEM AKTHER, J

February 22, 2019/DSK