HONOURABLE SRI JUSTICE SANJAY KUMAR
AND
HONOURABLE SRI JUSTICE P. KESHAVA RAO

WRIT PETITION No.2888 of 2015

ORDER: (per the Honourable Sri Justice Sanjay Kumar)

The challenge in this writ petition is to the assessment order dated 28.03.2014 of the Commercial Tax Officer, Malkajgiri Circle, Hyderabad, under the A.P. VAT Act, 2005 in relation to the tax period 2009-10 to 2012-13. By the said order, the petitioner company was found liable to pay tax dues aggregating to Rs.8,53,02,597/- within a time frame.

Though conditional interim stay of further proceedings pursuant to the impugned assessment order was granted in this writ petition on 13.02.2015, Sri S. Ravi, learned Senior counsel representing Sri K. Raji Reddy, learned counsel for the petitioner company, would fairly concede that the condition was not complied with, as the petitioner company failed to deposit 50% of the disputed tax amount as directed.

Sri M. Govind Reddy, learned special standing counsel for commercial taxes, State of Telangana, would concede that though leave was granted to the respondents, in the said conditional order itself, to take steps for realization of the amount assessed, if there was any default in making the deposit as directed, no such steps had been taken owing to the pendency of this writ petition.

Sri S. Ravi, learned senior counsel, would assert that the impugned assessment order was in the nature of an *ex-parte* order as the material filed by the petitioner company was not taken into consideration. He would however concede that as per the counter affidavit filed by the respondents, they claimed that the said material was not available with them.

This disputed fact cannot be resolved in this writ petition.

Sri S. Ravi, learned senior counsel, would however assert that the petitioner company would be in a position to substantiate its case before the authority if given an opportunity.

It may be noted that the impugned assessment order was an appealable one and in the event such an appeal had been preferred, the petitioner company would have been statutorily bound to deposit part of the demanded tax amount as a condition precedent to maintain the appeal. As the petitioner company is now seeking relief on similar lines, it cannot be granted the benefit of a second round of hearing at its mere asking. It may however be noted that the impugned assessment order was passed as long back as in March, 2014, but it has not been given effect to despite the conditional interim order passed in this writ petition not being complied with. Therefore, giving an opportunity to the petitioner company to establish its case at this stage would not adversely affect the interest of the revenue.

The writ petition is accordingly allowed setting aside the impugned assessment order dated 28.03.2014 passed by the Commercial Tax Officer, Malkajgiri Circle, Hyderabad, subject to the petitioner company depositing 12.5% of the assessed tax amount of Rs.8,53,02,597/- with the Commercial Tax Officer, Malkajgiri Circle, Hyderabad, within six weeks from the date of receipt of a copy of this order. The petitioner company shall also place before the said Commercial Tax Officer all the documents that it wants to rely upon to establish its case. Upon deposit of the amount as directed supra, the Commercial Tax Officer, Malkajgiri Circle, Hyderabad, shall re-consider the matter afresh duly taking into account the documents furnished by the petitioner company and after affording it an opportunity of hearing. The re-assessment shall be completed by the Commercial Tax Officer, Malkajgiri Circle, Hyderabad, within four weeks from the date of deposit of the amount by the petitioner company. Any amounts already deposited by the petitioner company in relation to the subject tax periods covered by the impugned assessment order dated 28.03.2014 shall be given due credit while computing the amount to be deposited in terms of this order.

Pending miscellaneous petitions, if any, shall stand disposed of. No order as to costs.

SANJAY KUMAR, J

P. KESHAVA RAO, J

Date: 25.06.2019.
ES/CCM