HON'BLE SRI JUSTICE A.V.SESHA SAI
AND
HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

WRIT PETITION No. 2335 OF 2023

ORDER:
(*Per Hon'ble Sri Justice A.V.Sesha Sai*)

Heard Sri Shaik Jeelani Basha, learned counsel for the petitioner and Sri T.C.D.Sekhar, learned Government Pleader for Commercial Tax for the State of Andhra Pradesh for the respondents.

2. The Revision Order dated 25.10.2022 passed by the Deputy Commissioner (CT), Visakhapatnam Division/1st respondent herein, levying penalty of Rs.4,78,896/- under Section 53(1) of the AP VAT Act, 2005 (for short 'the Act') read with Rule 25(8)(a) of AP VAT Rules 2005 and Rs.1,08,190/- under Section 51(1) of the Act is under challenge in the present Writ Petition.

3. According to the petitioner it is a Private Limited Company, incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of paints and it has manufacturing units at Mumbai, State of Maharashtra and the State of Gujarat. The petitioner herein got registered as a dealer

on the rolls of the 2nd respondent herein. The 1st respondent herein, in exercise of the powers conferred under Section 32(2) of the Act, initiated proceedings to revise the proceedings dated 29.10.2018 passed by the Deputy Commercial Tax Officer, Dabagardens Circle, Visakhapatnam Division. The present impugned Revision Order pertains to the tax period, commencing from June-2014 to March-2017.

4. According to the learned counsel for the Writ Petitioner the order of the 1st Respondent, which is impugned in the present Writ Petition, is violative of the principles of natural justice and the circulars issued by the Commissioner, Commercial Tax. It is further submitted by the learned counsel that after the commencement of the GST regime from 01.07.2017, the petitioner company wound up its business activities at Visakhapatnam and there is also change of E-mail ID of the petitioner and in view of the same, the petitioner herein lost the opportunity of responding to the show cause notices issued by the respondent Authorities.

5. On the other hand, learned Government Pleader, strongly resisting the Writ Petition, contends that in view of the lapse on the part of the petitioner in furnishing the new address,

the petitioner is not entitled for any indulgence of this Court under Article 226 of the Constitution of India. It is further submitted by the learned counsel that, only after making all possible efforts to serve the notice, the 1st respondent herein passed the impugned order, as such, the same cannot be faulted. However, having regard to the submissions of the learned counsel for the petitioner with regard to winding up of the business of the petitioner at Visakhapatnam and the change of E-mail ID, this Court deems it appropriate to grant opportunity to the petitioner to agitate before the 1st respondent on merits, however, subject to certain terms and conditions.

5. For the aforesaid reasons, the Writ Petition is allowed, setting aside the impugned Revision Order dated 25.10.2022. However, this order will not preclude the respondent authorities from issuing show cause notice afresh to the address indicated in the cause title of the present Writ Petition, calling for the explanation. Thereafter, it is open for the respondent authorities to pass appropriate orders after receipt of explanation by the petitioner within the time to be stipulated in the said notice. It is also made clear that this order will enure to the benefit of the petitioner only in the event of the petitioner paying a sum

equivalent to 25% of the amount indicated in the order dated 25.10.2022 within a period of four (4) weeks from today and, in the event of failure on the part of the petitioner to pay the aforesaid amount within the time stipulated, it is open for the respondent authorities to proceed in accordance with law. It is also made clear that if any amount is already paid, the same shall be given credit to while passing the orders. There shall be no order as to costs.

6. Miscellaneous petitions pending if any, shall stand closed.

JUSTICE A.V.SESHA SAI

JUSTICE B.V.L.N.CHAKRAVARTHI

01.02.2023
TPS

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