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**(2014) 04 AP CK 0021**

**Andhra Pradesh High Court**

**Case No:** Writ Petition No. 6341 of 2014

F1-Time Machine

APPELLANT

Vs

Government of Andhra Pradesh

RESPONDENT

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**Date of Decision:** April 2, 2014

**Acts Referred:**

- Constitution of India, 1950 - Article 14, 226

**Citation:** (2014) 58 APSTJ 281

**Hon'ble Judges:** M. Satyanarayana Murthy, J; Ashutosh Mohunta, J

**Bench:** Division Bench

**Advocate:** Dantu Srinivas, Special Standing Counsel, Advocate for the Appellant; M.V.J.K. Kumar, Advocate for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

M. Satyanarayana Murthy, J.

This writ petition is filed under Article 226 of Constitution of India to issue a direction in the nature of writ of mandamus declaring the proceedings, demand notice issued by the 4th respondent vide AO/6446, dated 05.02.2014 as illegal, arbitrary, untenable, contrary to the provisions of AP VAT Act and the rules framed thereunder in view of the circular issued by the 2nd respondent dated 31.05.2013 vide CCT's reference No. AII(1) 115/2013, without any opportunity and to set aside the impugned order dated 05.02.2014 vide AO/6446, alleging that the petitioner was assessed by the 4th respondent for the year 2010-11 i.e., April 2010 to March 2011 and issued proceedings under Rule 25(5) of the Act to a tune of Rs. 99,53,598/- and the same is questioned by the petitioner as it was passed without providing any reasonable opportunity and totally flagrant violation of the instructions and circular issued by the Department. Thus, passing impugned order without affording opportunity is totally against the principles of natural justice and hit by Article 14 of Constitution of India. The petitioner is within the jurisdictional limit of the 3rd

respondent Division and initially on 22.03.2013, a notice of assessment of the VAT under Rule 25(5) was issued by the Commercial Tax Officer (Audit) Panjagutta Division duly assessing the tax payable for the year 2008-2012 and for 3 years assessing to Rs. 50,34,198/- as due, to the Commercial Tax Department. The proceedings are self explanatory and the officer has derived the amount by taking into books of accounts submitted by the petitioner and Form No. 305 was issued. Pursuant to the same, on 16.05.2012 he issued reminder notice requesting to attend personal hearing scheduled on 23.05.2013. while the matter stood thus, the 3rd respondent has entrusted the assessment of tax to the Commercial Tax Officer, Jubilee Hills Circle, dated 10.05.2013 (Form ADM IB) for which the Commercial Tax Officer, Jubilee Hills Circle on 25.05.2013 issued Form 310 notice to the petitioner for production of documents and it was duly entailing the nature of documents to be produced. As directed, the petitioner has deposited all the documents including (Books of Accounts) and receipt of the same was acknowledged by the 4th respondent.

2. The 1st assessment notice was issued by the CTO (Audit) dated 22.03.2013, the petitioner submitted his explanation which is under consideration, however, during pendency of the said proceedings, the petitioner received another notice issued by CTO, Jubilee Hills Circle, on 23.09.2013 onwards and finally on 03.11.2013 directed the petitioner to appear for personal hearing and the petitioner appeared before the 4th respondent, the 4th respondent extended time for attendance for hearing and simultaneously requested to return the books which were deposited enabling the petitioner to file objections effectively.

3. The 2nd notice issued by the 4th respondent for the same years, the tax was assessed to Rs. 99,53,598/- which is excessive. In fact, the same was assessed earlier by issuing notice to a tune of Rs. 50,34,198/- by the CTO (Audit). The issuance of notice by two Officers is contrary to the provisions of law and it is arbitrary act of both the Officers. Apart from that, the CTO (Audit) after personal hearing assessed the tax to Rs. 50,34,198/-, whereas the impugned order discloses assessment to Rs. 99,53,598/-. Therefore, initiating proceedings by two Officers is an irregularity on the face of it and it is against principles of natural justice.

4. The petitioner further contended that the Commissioner, Commercial Tax Office, issued a circular vide CCT's reference No. AII(1) 115/2013, dated 31.05.2013 stating that the dealers should be given reasonable opportunity and at the same time the circular also discloses that it is based on the direction given by this Court only. Thus, the order passed by the 4th respondent is totally contrary to the circular issued by the Commissioner, Commercial Tax Office. Hence, the order passed by the 4th respondent is illegal and contrary to the provisions of law.

5. It is further contended that the petitioner has no other alternative, effective, efficacious remedy under the provisions of the Act. Hence, he approached this Court under Article 226 of Constitution of India seeking indulgence of this Court.

6. At the time of hearing, we heard the learned counsel for the petitioner and learned standing counsel for Commercial Taxes at length.

7. The main contention of the petitioner is that the impugned assessment order was passed without affording any opportunity much less reasonable opportunity and it is against the circular issued by the Commissioner, Commercial Tax Office, also the directions issued by the High Court in various judgments. When the order is passed against the principles of natural justice, this Court can exercise the jurisdiction under Article 226 of Constitution of India, Apart from that, issuance of notice and proceedings by two different Officers simultaneously is another lacuna in passing impugned order. Therefore, the order is liable to be set aside and prayed to pass appropriate orders.

8. Per contra, the learned special standing counsel for Commercial Taxes contended that the procedure adopted by the respondents may be against the circular, however, they are competent to do it and supported the impugned order passed by the 4th respondent.

9. Considering rival contentions, perusing material available on record, the sole point that arises for consideration is:

"Whether initiating proceedings simultaneously by respondent Nos. 3 and 4 for the same assessment year against the petitioner is in accordance with law, if so, failure to provide a reasonable opportunity, more particularly, personal hearing in passing the impugned order amounts to violation of principles of natural justice, if so, is the impugned order is liable to be set aside?"

POINT:

10. Admittedly, the petitioner is dealer, bearing Tin No. 28230196741, a notice under Rule 25(5) was issued by the 3rd respondent - CTO (Audit) Panjagutta Division, dated 31.05.2013 assessing total tax due to the department at Rs. 50,34,198/- for the year 2008-2012 (tax period). Thereupon, the petitioner submitted the books of accounts and other details. During the pendency of the proceedings before the 3rd respondent, the 4th respondent-CTO, Jubilee Hills Circle, issued notice dated 05.02.2014 for the same assessment year assessing the petitioner to Rs. 99,53,598/- and also issued Form No. 305-A for the same year. Later, at the request of the petitioner time was extended after filing an explanation. But before terminating the proceedings issued by the 3rd respondent, the 4th respondent also assessed the petitioner to tax but for different amount. The 3rd respondent issued Form 305-A dated 22.03.2013, whereas the 4th respondent issued impugned proceedings dated 05.02.2014, but the assessment by the 3rd respondent was finalised on 31.03.2013 fixing the total liability of tax at Rs. 4,86,342/-. Thus, it is clear from both the impugned proceedings, order passed by the 4th respondent and the order passed by the 3rd respondent, they conducted proceedings simultaneously against the petitioner for the same years of assessment and assessed the petitioner for

different amounts basing on the same material. Passing of such orders, simultaneously by two Officers creates any amount of confusion in the mind of the petitioner and either of them are legally initiated proceedings by two different Officers itself is an irregularity in assessing the la lay by the Department. Therefore, the impugned proceedings issued by the 4th respondent, is contrary to the Rules and it is vitiated by an irregularity.

11. One of the main contentions of the petitioner is that a personal hearing was not given to the petitioner and passed the impugned order by the 4th respondent. Passing of such order without giving personal hearing by the 4th respondent is totally against the procedure contemplated under the Act and circular issued by the Commissioner, Commercial Tax Office dated 31.05.2013 in CCT's reference No. AII(1) 115/2013. As seen from the material on record, originally Form 310 was issued on 25.05.2013 directing the petitioner to produce the documents and later 10 days time was granted at the request of the petitioner by order dated 23.09.2013 directed the petitioner to appear for personal hearing on 27.09.2013 at 11.00 AM. Again an intimation dated 28.09.2013 was given directing the petitioner to produce the documents and appear before the 4th respondent and final notice of personal hearing was issued on 13.11.2013 and finally passed the impugned order. Thus, it appears from the record, notice of personal hearing was given only on two occasions, but whereas the circular issued by the Commercial Tax Department dated 31.05.2013 says that the dealer should be given 2 or 3 opportunities of 10 to 15 days each and that the reasonable opportunity should be given to the dealer. But here no such reasonable opportunity was given as directed by the Commissioner, Commercial Tax Office, and the procedure adopted by the 4th respondent is totally contrary to the circular.

12. The Commercial Tax Department issued a circular CCT's reference No. B-V(3)/37/2010, dated 10.10.2012 issuing necessary instructions to the concerned department for assessment of the VAT and the procedure adopted by the 4th respondent is totally contrary to the guidelines. Thus, it is clear from the record that respondent Nos. 3 and 4 initiated proceedings simultaneously for assessing the dealer the petitioner herein totally in deviation of the circular issued by the Department from time to time and no sufficient opportunity for personal hearing was given and it is contrary to the circular. The impugned order passed by the 4th respondent created confusion in the mind of the dealer and there is lot of variation between the orders passed by respondent Nos. 3 and 4. Therefore, the order passed by the 4th respondent after passing an order by the 3rd respondent is a grave illegality. Since, the 4th respondent is not a revisional authority who can revise the assessment suo moto as per the provisions of VAT Act. But exercise of such power is totally contrary to the referred guidelines. Hence, the impugned assessment order is set aside, however, liberty is given to the Department to assess the dealer after due compliance of the prescribed procedure for assessing, affording reasonable opportunity to the dealer. Hence, the impugned order passed by the 4th respondent

dated 05.02.2014 in AO/6446 is hereby set aside holding that the order passed by the 4th respondent is arbitrary, illegal and invalid. Accordingly, the point is held in favour of the petitioner and against the respondents. In the result, the writ petition is allowed setting aside the impugned order passed by the 4th respondent. However, liberty is given to the Department to assess the dealer-the petitioner herein according to the procedure, affording reasonable opportunity. No costs. In consequence, Miscellaneous Petitions, if any pending in this petition shall stand closed.