(2014) 02 AP CK 0171

In the Andhra Pradesh High Court

Case No : Writ Petition No. 39425 of 2013

Radheshyam and Co. APPELLANT

Vs

Assistant Commissioner (CT) VMU-II RESPONDENT

Date of Decision : 04-02-2014

Acts Referred:

Citation : (2014) 58 APSTJ 51

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

Bench : Division Bench

Advocate : M.V.J.K. Kumar, Advocate for the Appellant; P. Balaji Varma, Special Standing Counsel, Advocate for the Respondent

Judgement

Ashutosh Mohunta, J.—The petitioner has filed this writ petition to declare the orders of assessment, dated 10.11.2011 in AAO No. 12188 in reference No. AC/VMU-II/2011-12 and the order of penalty dated 28.12.2011 in AAO No. 17693 in Tin 28563726754 in Form VAT 203 as also the Form-V notice of attachment dated 21.12.2013 as illegal, arbitrary and without jurisdiction. The assessment was carried out against the petitioner by the Assistant Commissioner of Commercial Taxes (VMU-II), Hyderabad, the first respondent herein and the aforementioned assessment order was passed vide order dated 10.11.2011. The petitioner is directed to remit the balance tax of Rs. 9,68,492/- to the Commercial Tax Officer, Begum Bazar Circle, Hyderabad, the third respondent herein within 30 days from the date of receipt of a copy of that order.

2. Learned counsel for the petitioner submits that before undertaking the excise of assessment against the petitioner, it was incumbent for the first respondent to obtain authorization for assessment from the Territorial Deputy Commissioner under Rule 59(1)(4) of the A.P. VAT Rules, 2005.

3. Learned Special Standing Counsel for the Commercial Tax however submits that in the present case, a show cause notice was first issued, and subsequently, authorization was obtained.

4. After hearing the counsel for the parties, we are of the considered opinion that the first respondent ought to have taken the authorization prior to issuance of the show cause notice. However, in the present case, it is otherwise.

5. In view of the above, we set aside the assessment order dated 10.11.2011 as well as penalty order dated 28.12.2011 passed against the petitioner as it is contrary to Rule 59(1)(4) of the A.P. VAT Rules, 2005 and the case is remanded back to the first respondent for a decision afresh and the first respondent shall now pass its orders after complying with the required formalities under law. Accordingly, the Writ Petition is disposed of. There shall be no order as to costs. Miscellaneous Petitions pending, if any, shall stand closed.

