

**HON'BLE SRI JUSTICE R.SUBHASH REDDY
AND
HON'BLE Mrs. JUSTICE ANIS**

WRIT PETITION No.62 of 2015

ORDER : (per Hon'ble Sri Justice R.Subhash Reddy)

This writ petition is filed questioning the validity of the order in TIN.28650289168/2009-10 & 2010-11, dated 3.12.2014, passed by the 2nd respondent-Commercial Tax Officer, Brodipet Circle, Guntur, as barred by limitation.

2. By the aforesaid order, the 2nd respondent has observed that the petitioner has under-declared the tax due to the Department in a sum of Rs.75,07,122/- and demanded to pay the said amount within a period of thirty days from the date of receipt of the said order.

3. The petitioner is a Partnership concern, engaged in the business of trading of Gutka, Cigarettes, Beedies etc., and a registered Dealer on the rolls of 2nd respondent under the provisions of A.P. VAT Act, 2005 (for brevity "the Act"). It is the case of the petitioner that in view of the provisions contained under Section 21(4) of the Act, the impugned order and the consequential demand notice are barred by limitation.

4. On the other hand, it is the contention of the learned Government Pleader for Commercial Taxes that in case of evasion of tax by the dealer, limitation period is six years and in view of the allegations made against the petitioner, it falls within the scope of Section 21(5), but not Section 21(4) of the

Act.

5. Time and again it is held that the aspect of limitation is a mixed question of fact and law. It is not in dispute that against the impugned order passed by the Commercial Tax Officer, alternative remedy of appeal before the appellate Deputy Commissioner and further appeal before the Tax Appellate Tribunal. In view of availability of an efficacious alternative remedy, there appears no reason at all to entertain this writ petition, directly filed challenging the order dated 3.12.2014. Moreso, having regard to the allegations made against the petitioner, this Court is of the view that if the petitioner approaches the appellate authority, all the pleas raised by the petitioner will have to be considered.

6 . For the aforesaid reasons, this writ petition is dismissed at the admission stage, giving liberty to the petitioner to avail the alternative remedy of appeal before the appellate Deputy Commissioner. If any such appeal is filed by the petitioner, it is open to the appropriate authority to consider the same on its own merits, uninfluenced by this order. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE R. SUBHASH REDDY

JUSTICE ANIS

27.01.2015.

Msr

HON'BLE SRI JUSTICE R.SUBHASH REDDY
AND
HON'BLE Mrs. JUSTICE ANIS

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