



HIGH COURT OF ANDHRA PRADESH
WEDNESDAY ,THE THIRD DAY OF MAY
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO
THE HONOURABLE SMT JUSTICE VENKATA JYOTHIRMAI PRATAPA
WRIT PETITION NO: 4937 OF 2023

Between:

1. M/S. SAI RAGHAVENDRA TRADING CORPORATION 9/157, Railway Station Road,
Near Municipal Office, Piduguralla.
Guntur District. Now Palnadu District.
Rep. by its Accountant and Authorised Representative
Mr.Seelam Narasimha Rao

...PETITIONER(S)

AND:

1. THE HONBLE A P VAT APPELLATE TRIBUNAL Visakhapatnam. Rep. by its Secretary
2. The Deputy commissioner(CT) Guntur-II Circle, Guntur.
3. The Commercial Tax Officer, Piduguralla Circle, Piduguralla. Guntur District.
4. The State of Andhra Pradesh, Rep. by its Principal Secretary, Revenue (CT) Department, A.P. Secretariat, Armaravati.

...RESPONDENTS

Counsel for the Petitioner(s): SHAIK JEELANI BASHA

Counsel for the Respondents:

The Court made the following: ORDER



HONOURABLE SRI JUSTICE U. DURGA PRASAD RAO

AND

HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

Writ Petition No.4937 of 2023

ORDER: (Per Hon'ble Smt. Justice VenkataJyothirmai Pratapa)

This writ petition is filed under Article 226 of the Constitution of India seeking the following relief:

"to issue a Writ or Order more in the nature of Mandamus declaring the action of the 1st respondent in passing the rejection orders dated 31.01.2020 rejecting the restoration application dated 04.08.2018 filed by the petitioner for the Assessment Year 2008-09 under CST Act, 1956, without granting sufficient opportunity of being heard and more particularly, when the defects raised in A.R.No.162/2016 was rectified by the petitioner, as arbitrary, contrary and in violation of principles of natural justice and Rule of Law and consequently to set aside the rejection orders of the 1st respondent, dated 31.01.2020 as null and void."

2. Heard submissions made by Sri ShaikJeelaniBasha, learned counsel for the Writ Petitioner and the learned Government Pleader for Commercial Tax. At the stage of admission, as consented by the learned counsel on both sides, this Court made the following Order.



3. The petitioner is a partnership firm engaged in the business of Cotton and Cotton Seed during tax period 200809 and he is dealer on the rolls of the 3rd respondent under the Andhra Pradesh Value Added Tax Act, 2005 (hereinafter "VAT Act,2005") and the Central Sales Tax Act, 1956 (hereinafter "CST Act, 1956"). The 3rd respondent being the Assessing Authority initially assessed for the tax period 2008-09 on 12.01.2012 levying tax on the deemed export sales in the absence of "H" declaration forms. Thereafter, the Assessing Authority considered the request of the petitioner and revised the Assessment Order on 31.01.2013 relating to H-forms filed by the petitioner and granted relief, vide orders dated 12.10.2015 which became final.

4. While things stood thus, the 2nd respondent acting under revisional powers proposed to revise the assessment proceedings by virtue of his powers under Section 32 of the V.A.T. Act, 2005 read with Section 9 (2) of the C.S.T. Act, 1956. The 2nd respondent intended to revise on a turnover of Rs.1,65,37,042/- as the transaction does not qualify for exemption in the absence of statutory forms. The Assessee was directed to pay the tax to a



tune of Rs.6,61,482/-. Accordingly, a revised show cause notice dated 29.03.2016 was issued.

5. Consequently, the petitioner filed an explanation to the show cause notice on 30.04.2016 stating that there is no fresh material to revise the assessment. The Revisional Authority rejecting the plea of the petitioner passed revised proceedings stating that the prescribed 'H' forms shall be submitted only at the time of assessment and the first Assessing Authority should not have considered the said forms.

6. It is the submission of the petitioner that the Revisional Authority passed proceedings dated 10.06.2016 without granting an opportunity of hearing. The petitioner carried the matter in appeal before the A.P.V.A.T. Appellate Tribunal under Section 33 of the V.A.T. Act, 2005 but did not make payment of 25% of the disputed tax and appeal fees vide A.R.No.162 of 2016. As a result, it was rejected by the Tribunal on 17.07.2017. The petitioner filed restoration petition before the Tribunal on 04.08.2018 duly rectifying the defects as per the appeal rejection proceedings. The Tribunal dismissed the said application vide



order dated 31.01.2020. In this view of the matter, the petitioner prays for indulgence of this Court under Article 226 of the Constitution of India since there is no alternative remedy left to him to pursue the matter challenging the rejection order of the 1st respondent on the petition filed for restoration of appeal without giving opportunity of being heard.

7. In the light of the submissions made at the bar, it is beneficial to look into relevant provisions of appeal under the V.A.T Act, 2005.

Section 33 (1) (b) the Andhra Pradesh V.A.T Act, 2005-

(1) Any dealer objecting to an order passed or proceeding recorded:-

(a) by any authority, on appeal under section 31: and

(b) by the Additional Commissioner, or Joint Commissioner or Deputy Commissioner under sections 21 or 32 or 38; or

(c) by any authority following the ruling or order passed under section 67; may appeal to the Appellate Tribunal within sixty days from the date of service of the order or proceeding on him.

(2) The Appellate Tribunal may within a further period of sixty days admit the appeal preferred after the period of sixty days specified in sub-section (1), if it is satisfied that the dealer had sufficient cause for not preferring the appeal within that period:

Provided that no appeal against the order passed under section 31 shall be admitted under sub-section (1) or sub-section (2) of this section unless it is accompanied by satisfactory proof of the payment of fifty percent of the tax, penalty, interest or any other amount as ordered by the Appellate Authority under section 31;



Provided further that no appeal against the order passed under sub-section (2) of section 32 shall be admitted under subsection (12) or sub-section (2) unless it is accompanied by satisfactory proof of the payment of the tax, penalty, interest or any other amount admitted by the appellant to be due or of such instalments as might have become payable, as the case may be, and twenty five percent of the difference of the tax, penalty, interest or any other amount ordered by the revisional authority under sub-section (2) of section 32 and the tax, penalty, interest or any other amount admitted to be due and paid by the appellant;

8. Needless to say that under Section 9 (2) of the C.S.T Act, 1956, r/w Section 32 (2) of the VAT Act, 2005, the original assessment order can be revised within a period of four years from the date of service of assessment order on the dealer.

8(a) It is not the case of the Writ Petitioner that he preferred appeal before the Tribunal beyond the condonable period of limitation. Though appeal is filed within the period of limitation, they have failed to comply the defects pointed out in 'B Notice' regarding the payment of 25% of the disputed tax and appeal fees within time. Nevertheless, they have filed the proof of payment of 25% of the disputed tax and appeal fees much later the rejection of appeal.

9. In this context, it is apt to recollect the judgment of the Composite High Court of Andhra Pradesh in



AnkammaTrading Company, Takkellapalli and others

vs. ADC (CT), Guntur and others¹, wherein it is observed

that as the second proviso employs the word "shall", it is mandatory. Payment of the admitted tax 12.5% of the disputed tax, and production of proof of such payment or condition precedent for admission of appeal. The Court further observed that the time limit specified in the first proviso to Section 19 (1) of the A.P.G.S.T. Act and Section 31 of the V.A.T. Act, 2005 would also apply for production of proof of payment of admitted tax and 12.5% of the disputed tax enabling the appellate authority to admit the appeal. The proof of payment shall be made at any time before the period within which the appeal may be admitted i.e., within 60 days from the date on which the dealer received the copy of the order passed by the authority and not thereafter.

10. The judgment referred supra has been impliedly overruled by the Hon'ble Apex Court in the case of **M/S. S.E.**

¹ 2011 (53) APSTCJ page 1 (AP HC)



GraphitesPrivate Limited v. State of Telangana and others²

"These provisions have been interpreted by the Division Bench of the High Court in the case of Ankamma Trading Company (supra). We are essentially concerned with the second proviso of Section 19 and Section 31 of the respective enactment; and first proviso of Section 21(2) and Section 33(2) of the respective enactment. Upon reading the Section under consideration as a whole, it is evident that the first proviso in the concerned Section (Section 19 and Section 31, as the case may be) pertains to limitation period "for filing" of an appeal; and discretion of the Appellate Authority to condone the delay in filing of such appeal, up to a maximum period specified therein. Indeed, the second proviso is part of the same Section. However, it is an independent condition and in one sense, mutually exclusive condition mandating or enjoining the appellant to produce proof of payment of tax dues in respect of which the appeal is preferred. That obligation, in our opinion, can be discharged until the appeal is considered for admission and/or condonation of delay in filing of the appeal, as the case may be, by the Appellate Authority for the first time. We are inclined to take this view as even the High Court in Ankamma Trading Company (supra) had justly noted that the said proviso does not provide for any specific period within which the tax dues should be paid. Moreover, there is no express stipulation to deposit the tax dues in respect of which the appeal is preferred, at the time of its filing, institution or presentation as such. In the absence of such a clear stipulation, it must necessarily follow that it is open to the assessee to file the appeal within the statutory period of limitation provided therefor and later on, deposit the specified tax dues but before the appeal is taken up for consideration by the Appellate Authority for the first time – be it for condonation of delay in filing the appeal and/or to admit it on merits or otherwise. The proof of such payment having been made could be produced thereat. Failing which, the Appellate Authority will have no

² Civil Appeal No(s). 7574/2014, dt. 27.03.2019



other option but to reject the appeal on that count. The Appellate Authority has no power to extend the time to deposit the specified tax dues.

9. *Suffice it to observe that, strictosensu, the said proviso is not a provision of predeposit at the stage of filing, institution or presentation of the appeal as such; but is a provision stipulating payment of tax dues as a prerequisite or sine qua non for consideration of appeal on merits or otherwise and/or for condonation of delay in filing the same, as the case may be, for the first time. If we may say so, it is also to impose fetter on the Appellate Authority from admitting the appeal for consideration on merits. It is well recognized that filing, institution or presentation of appeal in the office of the Appellate Authority is an independent event than the appeal being taken up for consideration "for the first time" for being admitted on merits or otherwise and/or for condonation of delay in filing it, as the case may be. There is no reason to interpret the stated proviso in any other manner lest, inevitably, it would result in rewriting the same and entail in doing violence to the legislative intent. Presumably, this Court in M/s. Innovatives Systems (supra), and other decisions rendered following the same, therefore, was persuaded to allow the appeal preferred by the assessee and to relegate the parties before the Appellate Authority for consideration of the appeal for admission on merits.*

10. *Concededly, this Court was conscious of the decision in Ankamma Trading Company (supra). In that, the judgment under challenge before it in the concerned appeal was founded on the view already taken by the coordinate bench of the same High Court [including in Ankamma Trading Company (supra)]. It has been so recorded by this Court. In that sense, the legal position expounded in AnkammaTrading Company (supra), stood impliedly overruled, even though that decision has not been adverted to or expressly overruled by this Court.*

11. *The argument of the respondent proceeds that the decision in M/s. Innovatives Systems (supra), neither refers to any specific*



provision nor has it expressly over turned the decision of the Division Bench of the High Court in Ankamma Trading Company (supra). Thus, it cannot be considered as a binding precedent. We are not impressed by this submission. Indeed, the decision of this Court in M/s. InnovativesSystems (supra), is a brief judgment. That, however, would make no difference. For, it is well established that once a special leave petition has been granted, the doors for the exercise of appellate jurisdiction of this Court have been let open. Resultantly, the order impugned before the Supreme Court became an order appealed against and any order passed thereafter would be an appellate order and attract the doctrine of merger despite the fact that the order is of reversal or of modification or of affirming the order appealed against and including is a speaking or nonspeaking one. This legal position has been restated in Kunhayammed (supra). Having said this, we must reject the argument of the respondentState that the decision of this Court in M/s. Innovatives Systems (supra), and other decisions following the same, cannot be considered as binding precedent"

(Emphasis supplied)

11. Coming to the facts of the present case, the Tribunal issued Form-B pointing out the defects relating to not filing of the proof of payment of 25% of the disputed tax and appeal fees. The order of the Tribunal is reproduced hereinafter for sake of reference;

"Bench functioned. Appellant is called absent. No representation in spite of receipt of Form-B on 09.06.2017. The Appellant did not turn up on 07.07.2017 also. The condition noted in Form-B have not been complied. Hence, appeal filed is closed as rejected".



12. It is apparent from the order of the Tribunal that when the matter came up for hearing before the Bench, the petitioner was neither present/represented nor has he complied with the defects pointed out. In the backdrop of the judgment referred to supra, the rejection order passed by the Tribunal is on correct lines since at the time of first hearing to admit the appeal, the party failed to comply the defects.

13. It is profitable to reproduce Regulations 7 and 9 of the Andhra Pradesh Value Added Tax Appellate Tribunal Regulations, 2005.

Regulation 7: Registration of appeals:

(1)On receipt of an appeal, the Secretary concerned shall endorse on it the date of its receipt. The Secretary concerned shall thereafter, as soon as possible, examine:-

- i. Whether the person representing it has the authority to do so; and*
- ii. Whether it confirms to the provisions of the Act, the rules and these regulations.*

If the Secretary concerned is satisfied on these points he shall cause it to be registered in a register to be kept for the purpose.

- a. If the Secretary concerned finds that the appeal does not confirm to the requirements of the Act, the rules and these regulations, he shall call upon the party by a notice in Form 'A' to remedy the defect or defects within a reasonable period to be specified by him. The Secretary may, for sufficient cause, extend the said period. If the*



defect or defects are remedied within the period allowed, the Secretary shall cause the appeal to be registered.

- b. If the defects are not remedied within the period allowed, the Secretary shall make a report to that effect to the Chairman of that jurisdiction who may reject the appeal or fix a date for hearing the matter and give due notice of such hearing to the party and State Representative in Form 'B'.*
- c. On the date so fixed, the Tribunal shall after hearing the party and the State Representative, pass orders directing either the registration of the appeal or its rejection. Where the appeal is rejected, the Tribunal shall record its reasons for doing so.*
- d. When an appeal is presented after the period under the Act, it shall be accompanied by a petition supported by an affidavit setting forth the facts on which the applicant relies to satisfy the Tribunal that he had sufficient cause for not preferring the appeal within such period. Such appeal shall not be admitted unless notice has been given to the respondent and his objections have been heard and the Tribunal is satisfied that the appellant had sufficient cause for not preferring the appeal in time.*

The notice under sub-registration (5) shall invariably mention, among others, the date on which the appeal was presented to the Secretary under Regulation 6 and also the challan number and date on which the appeal fee was paid according to Rule 44 of the APVAT Rules, 2005.

Regulation 9: Notice of appeal:

- i. After the appeal has been registered, notice of the day fixed for hearing under Regulation 8 in Form 'C' shall be delivered or issued by registered post to the party. The notice shall state that if he does not appear on the day so fixed or on any other day to which the hearing*



may be adjourned, the appeal will be dismissed for default or disposed of on merits ex parte.

- ii. Where an appeal, application or petition has been dismissed for default or disposed of ex parte, the appeal, application or petitioner may apply to the Tribunal for readmission of the appeal, application or petition; and where it is shown to the satisfaction of the Tribunal that he was prevented by sufficient cause from appearing when the appeal, application, or petition was called on for hearing, the Tribunal may readmit the appeal, application or petition on such terms as it thinks fit.*
- iii. An application of re-admission of an appeal, application or petition dismissed for default or disposed ex-parte, shall be made within thirty days from the date of communication of the order of dismissal."*

14. As seen supra, Regulations 7(3) and 7(4) speak about rejection of appeal, but they do not indicate anything relating to restoration of appeal so rejected for non-compliance of the requirements under the Act, the Rules and the Regulations. Regulation 9(2) deals with the readmission of the appeal, which has been dismissed for default or disposed of ex parte, however the language employed in Regulation 9 is vivid that it is only after registration of the appeal, but not at the stage of pending registration of the appeal. As no enabling provision authorises the Tribunal to deal with the restoration of such rejected appeal



at the stage of pending registration, the order impugned passed by the 1st respondent based on note file of the registry without giving notice to the appellant since is permissible under law, does not suffer from any infirmity.

15. In the case on hand, fact remains that the appeal came to be rejected at the stage of pending registration for the failure of the petitioner to rectify the defect as indicated in Form-B notice issued by the Secretary. The record further indicates that having received notice from the Secretary, APVAT Appellate Tribunal, the petitioner failed to comply the objections within the time frame but has paid the disputed tax of 25% and appeal fees, which are mandatory requirements to register the appeal with a delay after passing of the rejection orders.

16. In a matter before a Coordinate Bench of this Court in **M/s Vani Cloth Showroom v. Commercial Tax Officer and others** ³, His Lordship Hon'ble Chief Justice J. K. Maheswarispeaking for the bench held that it is appropriate to give one more opportunity for removing the defects in a case

³ W.P.No.3256 of 2020, dated 11.02.2020, High Court of Andhra Pradesh; Amaravati



where appeal rejected for non-compliance of defects. While allowing the Appeal, costs of Rs.10,000/- were imposed on the petitioner to deposit before the High Court Legal Services Committee. Similar order is passed in W.P.No.503 of 2021, dated 27.01.2021.

17. A similar question fell for consideration before the erstwhile High Court of Andhra Pradesh in ***M/s Ingram Micro Pvt. Ltd. v. The Commercial Tax Officer and others⁴***, where the Telangana V.A.T. Appellate Tribunal returned the restoration application filed against the rejection order for non-compliance of the defects. While allowing the Writ Petition, His Lordship Hon'ble Sri Justice V. Ramasubramanianspeaking for the bench observed that the appeal to the V.A.T Tribunal is a statutory remedy and as such on procedural aspects, such a right cannot be allowed to die.

18. Indeed, the right of appeal of a party is a creature of statute and hence a statutory remedy. Therefore, on procedural aspects, such a right cannot be ignored as no alternate remedy is available to the petitioner to pursue against the impugned

⁴ W.P.No.40182 of 2016, dated 31.01.2017 High Court of Judicature at Hyderabad



order. This Court feels it is appropriate to entertain the cause of the petitioner under the writ jurisdiction.

19. A fortiori to attend the cause of evenness, it is apposite to allow the writ petition subject to payment of costs of Rs.10,000/- (Rupees ten thousand only) before the Tribunal within a period of two (2) weeks from the date of receipt of a copy of the order and then on payment of such costs, the 1st respondent-APVAT Appellate Tribunal is directed to take the appeal on file and dispose of the matter on merits as per law. It is made clear that in the event of failure to pay costs within the time frame, the appeal shall not be entertained.

20. Accordingly, the Writ Petition is allowed.

As a sequel thereto, miscellaneous petitions, if any, shall stand closed.

U. DURGA PRASAD RAO, J

VENKATA JYOTHIRMAI PRATAPA, J

Date: 03.05.2023

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