2023:APHC:20287

IN THE HIGH COURT OF ANDHRA PRADESH: AT AMARAVATI

*****

Writ Petition No.8218 of 2023

Between

M/s. G.R.R. Associates, 50-40-6,
Seethammadhara, Visakhapatnam,
Represented by its Managing Partner,
Mr. P. Gopala Reddy

... Petitioner

Vs.

Andhra Pradesh VAT Appellate Tribunal,
Visakhapatnam, represented by its Secretary,
Visakhapatnam represented by its Secretary
And 4 others

... Respondents

DATE OF JUDGMENT PRONOUNCED: 12.05.2023

HONOURABLE SRI JUSTICE U. DURGA PRASAD RAO

AND

HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

1.	Whether Reporters of Local newspapers may be allowed to see the Judgments?	Yes/No
2.	Whether the copies of judgment may be marked to Law Reports/Journals?	Yes/No
3.	Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?	Yes/No

_____

U. DURGA PRASAD RAO, J

_____

VENKATA JYOTHIRMAI PRATAPA, J

*** HONOURABLE SRI JUSTICE U. DURGA PRASAD RAO**

AND

HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

+ **Writ Petition No.8218 of 2023**

% DATE: 12.05.2023

Between:

M/s. G.R.R. Associates, 50-40-6,
Seethammadhara, Visakhapatnam,
Represented by its Managing Partner,
Mr. P. Gopala Reddy

... Petitioner

Vs.

Andhra Pradesh VAT Appellate Tribunal,
Visakhapatnam, represented by its Secretary,
Visakhapatnam represented by its Secretary
And 4 others

... Respondents

! Counsel for the petitioner : Sri C. Sanjeeva Rao

^Counsel for respondents : Government Pleader for Commercial Tax

< Gist:

➢ Head Note:

? Cases referred:

1) (2020) 19 SCC 681
2) (2013) 57APSTJ 111
3) (2013) in 57 APSTJ 103
4) (2013) in 57 APSTJ 103
5) 1999 (2) ALD 31

HONOURABLE SRI JUSTICE U. DURGA PRASAD RAO

AND

HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

Writ Petition No.8218 of 2023

ORDER: (*Per Hon'ble Smt. Justice Venkata Jyothirmai Pratapa)*

The 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 dismissal order dated 23.02.2023 for the tax period 2014-15 under the Central Sales Tax Act, 1956 instead of allowing the appeal directing the 3rd respondent to dispose of the appeal on merits, in the facts and circumstances of the case, as arbitrary, illegal and contrary to the provisions of Central Sales Tax Act, 1956 as well as the Andhra Pradesh Value Added Tax Act, 2005, the Assessment Order passed by the 2nd respondent, dated 19.03.2019 is barred by limitation for the tax period April, 2014 to January, 2015 and the Assessment proceedings are also in violation of principles of natural justice, and also to set aside the garnishee notice dated 20.03.2023 issued by the 2nd respondent to the 5th respondent for recovery of balance of disputed tax of Rs.38,03,561/-, pursuant to the dismissal orders referred supra.*

2. Petitioner is a partnership firm engaged in export of Resins Osides and other chemicals and registered as an assessee on the rolls of the 2nd Respondent under Andhra Pradesh Value Added Tax Act, 2005 (for short 'A.P. VAT Act) and Central Sales Tax Act, 1956 (CST Act). During tax period 20014-15, the petitioner effected direct export sales of Micro Silican, an exempted commodity under Section 5 of the CST Act. The petitioner submitted Form VAT 200 in Form CST/VI through online for the assessment year 2014-15. The 2nd respondent/Assessing Authority having scrutinized the forms and accounts, found that the petitioner failed to file statutory forms such as C-EI-E2-F to claim concessional rate of tax at the rate of 2% or to claim exemptions under Interstate transactions, ultimately arrived at the gross turnover of Rs.5,24,00,700/- relating to the exports under CST, assessed the petitioner the tax at Rs.76,07,121/- by imposing the applicable rate of tax @ 14.5%.

3. Challenging the assessment proceedings dated 19.03.2019, the petitioner carried the matter before the Appellate Deputy Commissioner-the 3rd respondent (for short "ADC") by disputing the levy of tax of Rs.76,07,120/-. The appeal was preferred with a delay of 11 months 21 days from the date of receipt of the Assessment Order. The 3rd respondent, though noticed that the appeal has been filed quite contra to the Section 31 (1) of the A.P. VAT Act, 2005, but to abide by the principles of natural justice, issued notice to the petitioner for hearing the appeal at admission stage.

4. Learned counsel for the petitioner, along with the authorized representative of the firm, appeared and stated that the Assessment order was misplaced in the office and they obtained the true copy from the Assessment Authority on 05.03.2020 and prays to admit the appeal. Learned ADC called the information from the Assessing Authority as to the

correct date of service of the Assessment Order. The 2nd respondent-Commercial Tax Officer (CTO) informed that the original order copy was served on Sri P. Sarath Chandra, S/o P. Gopala Reddy, Managing Partner of the firm on 19.03.2019 which is the very same date on which he passed Assessment Order. Learned ADC rejected the appeal observing that the petitioner might not have been able to file appeal for his personal reasons since the Act does not permit to admit the appeal, if filed beyond the condonable period of sixty days.

5. The petitioner felt aggrieved by the order of the 3rd respondent carried the matter in appeal before the A.P. VAT Appellate Tribunal-the 1st respondent herein in T.A.No.85 of 2022. The 1st respondent dismissed the appeal opining that in the light of Section 31 (1) of the A.P. VAT Act, the impugned order of the ADC is on correct lines since the appeal is not filed within the statutory period of limitation and the grounds urged by

the appellants are not satisfactory and justified. Confirming the order passed by the 3rd respondent, the appeal is dismissed.

6. Consequent to the orders referred above, a garnishee notice was issued by the jurisdictional Assessing Authority to the 5th respondent-ICICI Bank Limited where the petitioner is maintaining bank account for recovery of balance of disputed tax of Rs.38,03,560/- since half of the tax was already paid by the petitioner at the time of admission of appeal before the 3rd respondent and admission of the second appeal before the APVAT Appellate Tribunal. Hence, the Writ Petition.

5. The grounds on which the writ petition is filed are:

i) The proceedings of the 2nd respondent dated 19.03.2019 is patently barred by limitation for the tax period from April, 2014 to January, 2015 as per sub-rule (5A) of Rule 14A of the CST (AP) Rules, 1957.It is passed without granting personal hearing and alleged to have been e-mailed, which is in violation of principles of

natural justice and passed ex parte; contrary to Section 9(2) of the CST Act read with Rule 25 (5) of the AP VAT Rules;

ii) The disputed turnover is related to direct export sales of Micro Silica, which is exempted from tax underSection 5 (1) of the CST Act;

iii) The petitioner received orders passed by the 2nd respondent under the CST Act for the tax period 2015-16, dated 15.11.2019, 2016-17, dated 15.03.2021 in the same address but for the period of 2014-15, which is in dispute in the present case could not be served notice on the petitioner. Even for the tax period 2017-18 under CST proceedings dated 02.03.2020 received by the petitioner at the same address;

iv) The petitioner filed the appeal before the First Appellate Authority on 11.03.2020 immediately after receiving the copy of the order on 05.03.2020, but the appeal was dismissed, stating that it is filed with abnormal delay of 11 months 21 days from the date ofreceipt of the Assessment Order.

v) The service of the Assessment Order was on one Sri P. Sarath Chandra, Managing Partner of the firm on 19.03.2019 as stated by the 2nd respondent is not correct since he has never been the Managing Partner for the relevant period and to substantiate the same, copy of the partnership deed was filed vide Ex.P.9;

vi) The petitioner has never authorised any person in either Form VAT 560 or Form VAT 565 to receive notices or orders or to appear before the authorities;

vii) However, for any reason, the order was misplaced but when it came to the notice of the petitioner, immediately obtained a copy and filed the appeal.

viii) As there is no other efficacious and effective remedy, the present writ petition has been filed since he has good grounds to succeed on merits since the orderspassed amounts to miscarriage of justice;

ix) *No tax shall be levied or collected except by authority oflaw as per Article 265 of the Constitution of India as observed by the Hon'ble Supreme Court reported in* ***Dabur India Ltd and another v. State Of Uttar Pradesh and others (1990 (1) AIR 1814);***

x) *Though the Assessee failed to submit objections to the pre-assessment notice, still the Assessing Authority is expected to issue notice for personal hearing , unless specifically excluded by a statutory provision as observed by the High Court of Madras reported in* ***G.V.Cotton Mills (P) Ltd vs The Assistant Commissioner*** *(2019) 60 GSTR 418 (Madras)*

xi) *The 2nd respondent cannot levy tax @ 14.5% on the existing sales of Micro Silica even if it is treated as Interstate sales not covered by statutory forms the liability of the tax would be 5% as per Section 8 (2) of the CST Act. The petitioner placed reliance on the decision of the Hon'ble Supreme Court reported in* ***2011 (6) SCC 508****, wherein it is held as follows:*

"Whatever prohibited by law to be done, cannot be legally be affected by an indirect and contrivance on the principle of quandoaliquidprohibetur, prohibetur at omne per quod devenituradillud, which means "whenever a thing is prohibited, it is prohibited whether done directly or indirectly"

xii) The 2nd respondent ought to have considered the application of the petitioner dated 18.12.2019 by rectifying the mistake apparent on the record as per Rule 14A sub-rule (10) of CST (AP) Rules, 1957 and also Rule 60 of the A.P. VAT Rules, the 2nd respondent oughtto have considered the representation of the petitioner dated 18.12.2019.

xiii) The 3rd respondent-Appellate Deputy Commissioner passed order, which is contrary to Section 31 (4) of A.P. VAT Act read with Section 9(2) of the CST Act;

xiv) The petitioner further says that he has not collected the disputed tax, if compelled to pay the same, he will be put to severe loss and hardship, more particularly, the transactions are squarely covered by Section 5(1) of the CST Act.

Arguments advanced at the Bar:

7. Heard Sri C. Sanjeeva Rao, learned counsel appearing for the petitioner and the learned Government Pleader for Commercial Tax. With their

consent, the writ petition is disposed of at the admission stage.

8. Learned counsel for the petitioner would submit that the Assessment Order is barred by limitation. The Assessee was not served with pre-assessment notice and also the copy of the Assessment Order as per the provisions of the Act. The petitioner received the notice and orders relating to the years 2015-16, 2016-17, 2017-18 with the present address, but the registered post for the relevant period of 2014-15 was returned as no such addressee. The Assessing Authority has not issued any notice for personal hearing.

9. The Assessment order was served on Sri P. Sarath Chandra, who is not a Managing Partner and no authorization has been given by the petitioner to him to receive a notice and represent the firm before the authority. In the absence of such authorisation

any notice served on unauthorized person is not a service ofnotice.

10. In fact, the demand raised for Rs.76,07,121/-by the Assessing Authority is not tenable since they are sales in direct exports which are liable for exemption as per Section 5 (1) of the CST Act. The Assessment Order since misplaced, the petitioner having obtained the orders from the authority immediately filed appeal before the ADC, who rejected the appeal summarily without considering these aspects. The learned Tribunal also did not look into the actual aspect of the matter, but simply confirmed the order of the ADC. The impugned order suffers the vice of violation of principles of natural justice and it was passed *ex parte*.

11. Though the petitioner filed his representation along with the statutory forms on 18.12.2019, the authorities ignored the same.

12. Learned Government Pleader vehemently refuting the contentions of the petitioner would submit that the statutory right of appeal is given to the party, but the petitioner failed to avail within the statutory period of limitation, and therefore, he cannot be granted any extension of such period and prayed to dismiss the petition.

13. In the light of the arguments advanced, the pertinent question to be answered in this writ petition is regarding thepower of the High Court to exercise jurisdiction under Article 226 of the Constitution of India in a case where the appeal is filed beyond the condonable period of limitation asper the statute.

14. It is profitable and relevant to refer the judgment of the Hon'ble Supreme Court in ***Assistant Commissioner (CT) LTU, Kakinada and others v. M/s. Glaxo Smith Kline Consumer Health Care Limited (In short "Glaxo case")***[1]. The question

[1] (2020) 19 SCC 681

before the Hon'ble Supreme Court emanated from the judgment and order passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in W.P.No.31418 of 2018 is whether the High Court, in exercise of its writ jurisdiction under Article 226 of the Constitution of India, can entertain a challenge to the assessment order on the ground that the statutory remedy of appeal against that order stood foreclosed by the law of limitation.

15. For better understanding of the issue, the facts of the case are that ***M/s. Glaxo*** is a registered dealer was assessed to tax for the assessment year 2013-2014 under the impugned assessment Order dated 21.06.2017. The Assessment Order was duly served on the respondent on 22.06.2017. ***M/s. Glaxo*** deposited 12.12% of the disputed tax on 12.09.2017, but did not file appeal against the

Assessment Order within the statutory period. Thereafter, an application was filed under Rule 60 of A.P. VAT Act, 2005 on 08.05.2018 before the Assessing Authority which was rejected on 11.05.2018.

16. M/s. Galxo carried the matter in appeal before the Appellate Deputy Commissioner of Commercial Taxes, Vijayawada (for short 'ADC'), on 28.05.2018 which was rejected on 17.08.2018 on the ground the appeal was barred by limitation and also no sufficient cause was made out. M/s Glaxo moved a writ petition before the High Court for setting aside the Assessment Order being contrary to law, without jurisdiction and in violation of principles of natural justice. M/s. Glaxo did not challenge the order passed by the A.D.C. rejecting the statutory appeal. M/s. Glaxo has taken a stand that the employee who was in-charge of the tax matter had defaulted and was subsequently suspended in contemplation of

disciplinary proceedings, as a result of which, statutory appeal could not be filed within the prescribed time.

17. The Division Bench of the High Court passed ex parte order directing the respondent to pay an additional amount equivalent to 12.5% of the disputed tax within a week. **M/s. Glaxo** complied the condition and then the matter was taken up for hearing, the writ petition came to be allowed, the order passed by the Assessing Authority dated 21.06.2018 was quashed and the matter was relegated to the Assessing Authority for reconsideration of the matter afresh by giving opportunity of personal hearing to explain the discrepancies.

18. Being aggrieved by the order referred above, the Assessing Authority carried the matter before the Hon'ble Apex Court by filing appeal on the ground that **M/s. Glaxo** having failed to avail the statutory remedy of appeal within the prescribed time and also

failed to explain the delay in filing the appeal, the High Court ought not to have entertained the writ petition, more so, the order of the Appellate Authority (ADC) rejecting the appeal on the ground of delay became final. In substance, their argument is that the High Court exceeded its jurisdiction and committed manifest error in setting aside the assessment order dated 21.06.2017. On the other hand, on behalf of **M/s. Glaxo,** it was argued that the High Court has got ample power under Article 226 of the Constitution of India to grant such relief considering the peculiar facts of the case being under exceptional situation which, if not remedied, would result in failure of justice.

19. In the background of these facts, the question before the Hon'ble Apex Court was whether the High Court ought to have entertained the writ petition filed by **M/s. Glaxo**. The Hon'ble Apex Court observed at various paragraphs as follows;

Para-15:

In the subsequent decision in Mafatlal Industries Ltd, and others v. Union of India & Ors.12, this Court went on to observe that an Act cannot bar and curtail remedy under Article 226 or 32 of the Constitution. The Court, however, added a word of caution and expounded that the constitutional Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise its jurisdiction consistent with the provisions of the enactment. To put it differently, the fact that the High Court has wide jurisdiction under Article 226 of the Constitution, does not mean that it can disregard the substantive provisions of a statute and pass orders which can be settled only through a mechanism prescribed by the statute.

Para-16:

Indubitably, the powers of the High Court under Article 226 of the Constitution are wide, but certainly not wider than the plenary powers bestowed on this Court under Article 142 of the Constitution. Article 142 is a conglomeration and repository of the entire judicial powers under the Constitution, to do complete justice to the parties. Even while exercising that power, this Court is required to bear in mind the legislative intent and not to 12 (1997) 5 SCC 536 render the statutory provision otiose.

In a recent decision of a three-Judge Bench of this Court in ***Oil and Natural Gas Corporation Limited vs. Gujarat Energy Transmission Corporation Limited & Ors ((2017) 5 SCC 42)****, the statutory appeal filed*

before this Court was barred by 71 days and the maximum time limit for condoning the delay in terms of Section 125 of the Electricity Act, 2003 was only 60 days. In other words, the appeal was presented beyond the condonable period of 60 days. As a result, this Court could not have condoned the delay of 71 days. Notably, while admitting the appeal, the Court had condoned the delay in filing the appeal. However, at the final hearing of the appeal, an objection regarding appeal being barred by limitation was allowed to be raised being a jurisdictional issue and while dealing with the said objection, the Court referred to the decisions in ***Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur & Others ((2008) 3 SCC 70)Commissioner of Customs and Central Excise vs. Hongo India Private Limited & another ((2009) 5 SCC 791) Chhattisgarh State Electricity Board vs. CERC ((2010) 5 SCC 23) and Suryachakra Power Corporation Limited vs. Electricity Department represented by its Superintending Engineer, Port Blair & others ((2016) 16 SCC 152)*** *and concluded that Section 5 of the Limitation Act, 1963 cannot be invoked by the Court for maintaining an appeal beyond maximum prescribed period in Section 125 of the Electricity Act."*

Para-18:

"A priori, we have no hesitation in taking the view that what this Court cannot do in exercise of its plenary powers under Article 142 of the Constitution, it is unfathomable as to how the High Court can take a different approach in the

matter in 18 (2016) 1 SCC 315 reference to Article 226 of the Constitution. The principle underlying the rejection of such argument by this Court would apply on all fours to the exercise of power by the High Court under Article 226 of the Constitution."

Para-19

"We may now revert to the Full Bench decision of the Andhra Pradesh High Court in Electronics Corporation of India Ltd. (supra), which had adopted the view taken by the Full Bench of the Gujarat High Court in Panoli Intermediate (India) Pvt. Ltd. vs. Union of India & Ors.19 and also of the Karnataka High Court in Phoenix Plasts Company vs. Commissioner of Central Excise (Appeal-I), Bangalore. The logic applied in these decisions proceeds on fallacious premise. For, these decisions are premised on the logic that provision such as Section 31 of the 1995 Act, cannot curtail the jurisdiction of the High Court under Articles 226 and 227 of the Constitution. This approach is faulty. It is not a matter of taking away the jurisdiction of the High Court. In a given case, the assessee may approach the High Court before the statutory period of appeal expires to challenge the assessment order by way of writ petition 19 AIR 2015 Guj 97 20 2013 (298) ELT 481 (Kar.) on the ground that the same is without jurisdiction or passed in excess of jurisdiction by overstepping or crossing the limits of jurisdiction including in flagrant disregard of law and rules of procedure or in violation of principles of natural justice, where no procedure is specified. The High Court may accede to such a challenge and can also non-suit the

petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. However, if the writ petitioner chooses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under Section 31 of the 2005 Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. Doing so would be in the teeth of the principle underlying the dictum of a three Judge Bench of this Court in Oil and Natural Gas Corporation Limited (supra). In other words, the fact that the High Court has wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose.

Para-23:

"Pertinently, no finding has been recorded by the High Court that it was a case of violation of principles of natural justice or noncompliance of statutory requirements in any manner. Be that as it may, since the statutory period specified for filing of appeal had expired long back in August, 2017 itself and the appeal came to be filed by the respondent only on 24.9.2018, without substantiating the plea about inability to file appeal within the prescribed time, no indulgence could be shown to the respondent at all."

(Emphasis supplied)

20 In the light of the observations made by the Hon'ble Apex Court in **M/s. Glaxo** case, the question was answered in negative taking a view that the High Court cannot exercise its jurisdiction under Article 226 of the Constitution of India to attend the cause where the statutory appeal filed beyond the condonable period of limitation as a matter of course.

21 When a party approaches the High Court seeking indulgence under the writ jurisdiction within the statutory period of limitation to file appeal by challenging the assessment order, the court can entertain:

1) *when the order passed without jurisdiction;*

2) order passed in excess of jurisdiction by overstepping or crossing the limits of jurisdiction;

3) Utter disregard of law;

4) order passed discarding the rules of procedure;

5) violation of principles of natural justice where no procedure is specified.

22. The High Court may non-suit the writ petitioner on the ground that alternative efficacious remedy is available and that can be invoked by the writ petitioner.

22 In case the writ petitioner approached the court by invoking the writ jurisdiction after expiry of the maximum period of limitation prescribed under the Act, the High Court cannot disregard the statutory period by entertaining the writ petition to attend the grievance to such a party as a matter of course. Such order under writ jurisdiction would be in the teeth of the principle enunciated by the Hon'ble Apex Court in Three Judge Bench in **ONGC Corporation Limited** referred supra.

23 The powers of High Court under Article 226 of the Constitution of India though wide, should be exercised with self-imposed restraint, and as such the Court cannot issue any writ which is inconsistent with the legislative intent regarding the prescribed period

of limitation under Section 31 of the VAT Act, 2005, thereby making the legislative scheme and intention behind the proviso futile. The party who approaches the court under writ jurisdiction, has to substantiate the plea of "inability" to file appeal within the prescribed time.

24 Before adverting to scrutinize the Assessment order, it is profitable to look into the relevant provisions under the Act which are extracted infra.

Section 9 (2) of the CST Act, which reads thus:

"Section-9: Levy and collection of tax and penalties: (1) -----

(2) Subject to the other provisions of this Act and the rules made thereunder, the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, re-assess, collect and enforce payment of tax, including any interest or penalty, payable by a dealer under this Act as if the tax or interest or penalty payable by such a dealer under this Act is a tax or interest or penalty payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law

of the State, and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, rebates, penalties, charging or payment of interest, compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly.

Provided that if in any State or part thereof there is no general sales tax law in force, the Central Government may, be rules made in this behalf make necessary provision for all or any of the matter specified in this sub-section.

Rule 5-A of the C.S.T. (A.P.) Rules, 1957:

Rule-5-A: Every dealer shall be deemed to have been assessed to tax, based on returns filed by him, if no assessment is made within a period of four years from the date of filing of the return.

Rule 64 of A.P. VAT Rules, 2005:

64. Mode of Service of orders and notices:- (1) *Unless otherwise provided in the Act, or these Rules, a notice or other document required or authorised under*

the Act or those Rules to be served shall be considered as sufficiently served,-

(a) on a person being an individual other than in a representative capacity if,-

(i) it is personally served on that person; or

(ii) it is left at the person's usual or last known place of residence or
office or business in the State; or

(iii) it is sent by registered post to such place of residence, office or business, or to the person's usual or last known address in the State; or

(b) on any other person if, -

(i) it is personally served on the nominated person; or

(ii) it is left at the registered office of the person or the person's address for service of notices under the Act; or

(iii) it is left at or sent by registered post to any office or place of business of that person in the State;

Iv) where it is returned unserved, if it is put on board in the office of local chamber of commerce or traders association.

(2) The certificate of service signed by the person serving the notice shall be evidence of the facts stated therein."

25. **Order passed by the Assessing Authority (Second Respondent)**

(a) Now we shall examine the correctness of the Assessment Order passed by the 2nd respondent. The Assessment Order dated 19.03.2019 manifests that the dealer filed monthly returns online disclosing the turnover for the year 2014-15. The Assessing Authority has taken the turnover of Rs.5,24,65,700/- separately for the purpose of finalizing the assessment under CST Act relating to Interstate transactions during the relevant period. Needful to say that before initiating the process of assessment, the Assessing Authority invariably first has to issue pre- assessment show cause notice to the dealer calling for relevant information to finalise the assessment disclosed in the show cause notice. The order shows pre-assessment show cause notice on

04.08.2018 through registered post along with acknowledgment, which was returned with remarks "no such firm in this door number". So, there is no dispute that the registered post was not served on the dealer.

(b) The petitioner now filed the Assessment Order for the years 2015-16, 2016-17, 2017-18 received by him in the same address. However, the alleged registered post relating to the assessment year 2014-2015 was returned unserved. The order further indicates a mail was sent to the dealer on 02.07.2018 and 16.03.2019. Nonetheless the Assessing order further shows the dealer was informed through a phone to submit their written objections, if any, against the show cause notice issued under CST Act. It appears there is some force in the argument of the appellants that the pre-assessment show cause notice was not served on the assessee according to law.

(c) In **M. Adinarayana Piduguralla v. Commercial Tax Officer, Piduguralla Circle**[2], a Coordinate Bench of composite High Court of Andhra Pradesh held that service of notice of assessment should be in conformity with Rule 64 of the APVAT Rules, 2005 otherwise the Assessment Order passed thereon is unsustainable and violative of the procedure prescribed. It is a case where the pre-assessment notice and assessment order were sent to wrong postal address.

(d) In **SOA Software Engineering India Pvt. Ltd., v. Commercial Tax Officer, Madhapur Circle**[3], a Coordinate Bench of Composite High Court of Andhra Pradesh observed that Service of assessment order by e-mail is in violation of Rule 64 (1)(b) of the APVAT Rules, 2005, which prescribes the service of assessment order on the nominated person or is sent by registered post to any office or place of business of that person.

---

[2](2013) 57APSTJ 111
[3] (2013) in 57 APSTJ 103

(e) In **G.V. Cotton Mills (P) Ltd., v The Assistant Commissioner (CT), Avarayampalayam Assessment Circle, Coimbathore**[4], a coordinate Bench of Madras High Court held that simply because the dealer failed to submit the objections on the show cause notice, right of personal hearing cannot be denied.

(f) In the light of the discussion referred to supra, the order impugned passed by the second respondent is in contravention of Rule 64 of VAT Rules apart from violation of principles of natural justice.

(g) <u>Order passed by the Appellate Deputy Commissioner (3rd respondent):</u>

26. A cursory look at the order shows that on service of the assessment order, the dealer has to prefer appeal before the 3rd respondent that is the ADC within a period of 30 days. If the dealer failed to prefer an appeal within 30 days if he is able to show

[4] (2013) in 57 APSTJ 103

sufficient cause he can prefer an appeal within further period of 30 days.

(a) For ready reference Section 31 (1) of the APVAT Act reads is extracted hereunder:

> ***Section 31****: Appeal to Appellate Authority:- (1) Any VAT dealer or TOT dealer or any other dealer objecting to any order passed or proceeding recorded by any authority under the provisions of the Act other than an order passed or proceeding recorded by an Additional Commissioner or Joint Commissioner or Deputy Commissioner,* ***may within thirty days from the date on which the order or proceeding was served on him, appeal to such authority as may be prescribed.***
>
> *Provided that the appellate authority may within a further period of thirty days admit the appeal preferred after a period of thirty days if he is satisfied that the VAT dealer of TOT dealer or any other dealer had sufficient cause for not preferring the appeal within that period:*
>
> *"Provided further that the Commissioner may, in general but not in specific cases and in such circumstances, in which the appellate authorities are not able to discharge their normal functions due to natural calamities, public agitations or other similar reasons, notify the period of time to be excluded for the purpose of computation of the time limit for filing of appeals prescribed under the sub-section"*

Provided.....".

(b) The 3rd respondent opined that the Assessment Order was served on Sri P. Sarath Chandra, Managing Partner of the firm on 19.03.2019, as per the information furnished by the Assessing Authority that is the 2nd respondent herein. We will look into the genuineness of the said observations. The petitioner filed a copy of the registered partnership deed to show that P. Sarath Chandra was not the Managing Partner of the firm. At this juncture, it is apt to understand that if any notice is served on the unauthorised person, it cannot be considered as service of notice. The document filed by the petitioner shows that P. Sarath Chandra is the Managing Partner. It is not the case of the Assessing Authority that the petitioner filed VAT 560, 565 authorising a person by name P. Sarat Chandra to receive notice on behalf of the firm. In the absence of any such authorisation serving notice on Sri P. Sarath Chandra, who may be a son of the

petitioner, is not a valid service under law. The Assessment Order would manifest that no opportunity of personal hearing has been given since the Assessment year was going to end by 31.03.2019, but the order was passed on 19.03.2019 itself.

27. The First Appellate Authority, having counted the days from the date of service of the order on the unauthorised person, opined that the appeal is filed before him with a delay of 11 months 21 days. There was a reference of the reason for the delay in the order that unfortunately the Assessment Order was misplaced. Hence, he obtained true copy from the jurisdictional Assessing Authority on 05.03.2020 and filed appeal on 09.03.2020. Learned counsel for the petitioner submits that when it came to their notice about the assessment order, they thought that somebody misplaced the order and thereby obtained assessment order from the 2nd respondent. That does not mean that the Assessment Order was

served as per the provisions of the Act. In the light of the aforementioned reasons, the Order impugned passed by the third respondent is unsustainable.

Order passed by the A.P. VAT Appellate Tribunal (first Respondent):

28. The 1st respondent opined that the order of the A.D.C is on correct lines since the appeal preferred beyond the condonable period of limitation. As such, the Appellate Deputy Commissioner rightly rejected the appeal. In the background of the discussion referred supra relating to the order passed by the Assessing Authority, the order impugned passed by the first Respondent is not correct, brooks interference in this Writ Petition.

Furnishing 'C' forms after passing assessment order:

29. (a) The case of the petitioner is that they have done direct exports which are liable for exemption under Section 5 (1) of the C.S.T. Act. Be that as it

may, on 18.12.2019, the petitioner addressed a letter to the Assessing Authority furnishing C- forms along with 257 documents. As per Rule 12 (7) of the CST (R & T) Rules, 1957, it is left open to the Assessing Authority to reassess on furnishing such information by the Assessee even after completing the assessment. No whisper about the letter referred in the record, which was received by the office of the 2nd respondent, which affixed their seal.

(b) It is apt to recollect the judgment of the Composite High Court of the Andhra Pradesh in **State of Andhra Pradesh v. ITC Bhadrachalam Paper Boards Limited, Sarapaka**[5] observed that Rule 12 (7) of the CST Act R & T Rules, 1957 enables the Assessing Authority on sufficient cause being shown, to grant further time for production of C-forms even after assessment order was passed.

[5] 1999 (2) ALD 31

30. A Coordinate Bench of this Court in its Order dated 29.09.2022 in W.P.Nos.3905 and 3795 of 2021 in **Sarojini Engineering Works Private Limited v. Commercial Tax Officer, Dwarakanagar Circle and others**, observed that the Assessment order was said to have been passed without giving an opportunity of hearing and serving show cause notice and therefore, it was a fit case for remand back the matter to the Assessing Authority to deal with the same in accordance with law.

31. In the instant case, the First Appellate Authority and Second Appellate Authority did not make any attempt to refer and consider whether the service of pre-assessment notice, notice for personal hearing and service of assessment order before the Assessing Authority were made in accordance with the statute and if not, the resultant violation of principles of natural justice. They have not considered the case of the petitioner in right perspective as to the service of

notice as per Rule 64 of the AP VAT Rules. Under these circumstances, there is no option for the petitioner except to seek indulgence of this Court under Article 226 of the Constitution, on the ground of gross violation of principles of natural justice. In the backdrop of this fact situation, we hold there is no violation of principle enunciated in **M/s Galxo** case supra wherein it was observed that:

Para-23:

> *"Pertinently, no finding has been recorded by the High Court that it was a case of violation of principles of natural justice or noncompliance of statutory requirements in any manner. Be that as it may, since the statutory period specified for filing of appeal had expired long back in August, 2017 itself and the appeal came to be filed by the respondent only on 24.9.2018, without substantiating the plea about inability to file appeal within the prescribed time, no indulgence could be shown to the respondent at all."*

32. We are not extending the period of limitation after condonable period but, in the peculiarity of the present case, since the pre-assessment notice was not served as per the procedure, we deem it fit that an opportunity

shall be given to the assessee to place the material supporting direct export sales under Section 5 (1) of the C.S.T Act for claiming exemption.

33. We sum up our discussion as follows:-

a. A party can approach the High Court in a writ within the statutory period of limitation challenging the assessment order, in cases where the order is passed without jurisdiction, excess of jurisdiction, being flagrant disregard of law, violative of rules of procedure and violative of principles of natural justice.

b. The petitioner can be non-suited when there is an alternative and efficacious remedy available.

c. The High Court cannot exercise its jurisdiction under Art.226 of the Constitution of India, where a statutory appeal is filed beyond the condonable period of limitation as a matter of course.

d. Any order passed invoking writ jurisdiction when a petition is filed after condonable period of limitation falls contrary to judgment of three judge Bench in Oil

and Natural Gas Corporation Limited vs. Gujarat Energy Transmission Corporation Limited &Ors (2017) 5 SCC 42).

e. However, in cases where writ petition is filed beyond condonable period, the petitioner has to substantiate the "plea of inability" to file appeal within prescribed period. (As per **M/s. Glaxo case)**

f. Section 5 of Limitation Act, 1963 cannot be invoked by the Court for maintaining an appeal beyond the prescribed period under Section 31 of A.P.V.A.T. Act, 2005.

g. The service of notice should be in compliance to Rule 64 of A.P.VAT Rules, 2005.

34. In the result, the writ petition is allowed and the matter is remitted to the Assessing Authority for fresh consideration within a period of three months from the date of receipt of a copy of this order. Consequently, the garnishee notice issued by the 2nd respondent to the 5th respondent is set aside subject

to the petitioner maintaining Rs.38,03,561/- i.e., the balance of the disputed tax in the bank account, till disposal of the Assessment Order.

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

U. DURGA PRASAD RAO, J

VENKATA JYOTHIRMAI PRATAPA, J

Date: 12.05.2023

Ksn……xxx…

Note: L.R. copy to be marked

B.O./Ksn