



HIGH COURT OF ANDHRA PRADESH
MONDAY ,THE TWENTY NINETH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY ONE

PRSENT

THE HONOURABLE SRI JUSTICE AHSANUDDIN AMANULLAH
THE HONOURABLE SRI JUSTICE B KRISHNA MOHAN
WRIT PETITION NO: 27836 OF 2021

Between:

1. PEC LIMITED Rep. By its Chairman and Managing director F-Block, 3rd Floor, Flatted Factory Complex, F and G Block. Jhandewalan Jewellery Complex, Rani Jhashi Road, New Delhi-110055.

...PETITIONER(S)

AND:

1. The State of Andhra Pradesh, Rep. by its Principal Secretary, Commercial Taxes Department, AP Secretariat, Velagapudi, Amaravathi-523238.
2. The Commercial Tax Officer, Suryabagh Circle, Visakhapatnam
3. The Deputy Commissioner (CT), Visakhapatnam. Andhra Pradesh.

...RESPONDENTS

Counsel for the Petitioner(s): LAXMINARAYANA ALISHETTY

Counsel for the Respondents: GP FOR COMMERCIAL TAX

The Court made the following: ORDER



HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

**THE HON'BLE Mr. JUSTICE AHSANUDDIN AMANULLAH
AND
THE HON'BLE Mr. JUSTICE B. KRISHNA MOHAN**

WRIT PETITION No. 27836 of 2021

PEC Limited, Rep. by its Chairman & Managing Director,
F-Block, 3rd Floor, Flatted Factory Complex, F & G Block,
Jhandewalan Jewellery Complex,
Rani Jhashi Road, New Delhi-110 055.

.... Petitioner

Versus

1. The State of Andhra Pradesh,
Rep. by its Principal Secretary, Commercial Taxes Department,
A.P. Secretariat, Velagapudi, Amaravati -523 238.
2. The Commercial Tax Officer,
Suryabagh Circle, Visakhapatnam.
3. The Deputy Commissioner (CT),
Visakhapatnam, Andhra Pradesh.

.... Respondents

Counsel for the petitioner : Mr. Laxminarayana Alishetty,
Advocate.

Counsel for the respondents : Mr. S. A. V. Sai Kumar,
Assistant Government Pleader.

ORAL JUDGMENT

Date: 29.11.2021

(Per Hon'ble Mr. Justice Ahsanuddin Amanullah)

Heard Mr. Laxminarayana Alishetty, learned counsel for the petitioner and Mr. S. A. V. Sai Kumar, learned Assistant Government Pleader, Commercial Tax, for the respondents.

2. The petitioner has moved the court for the following relief:

“to issue a Writ Order or Direction, more particularly one in the nature of Writ of Mandamus declaring the action of the 2nd respondent in passing CST assessment Orders for the Financial Year 2016-17 vide AO.



No.209083, dated 30.05.2020 and Financial Year 2017-18 vide A.O.No.209292 dated 30.05.2020 without considering the submitted Bill of Entries on 03.04.2020, without providing opportunity of personal hearing, without passing any order on the e-mail representation dated 20.03.2020, without considering Global Carona pandemic and issuing endorsements vide TIN.37180129845/2016-17, dated 23.09.2021 and TIN.37180129845/2017-18, dated 23.09.2021 is illegal, arbitrary and violation of Article 14 19(1)(g), 21 and 300-A of Constitution of India and consequently,

- 1. Set aside the CST assessment Orders for the Financial Year 2016-17 vide A.O. No.209083, dated 30.05.2020 and Financial Year 2017-18 vide AO No.209292, dated 30.05.2020 and endorsements issued vide TIN.37180129845/2016-17 dated 23.09.2021 and TIN.37180129845/2017-18, dated 23.09.2021 passed by 2nd respondent and*
- 2. Direct the 2nd Respondent to afford opportunity of personal hearing to the petitioner and consider all material on record and pass fresh CST assessment Orders for the Financial Year 2016-17. And 2017-18.”*

3. The petitioner is a company dealing in the business of the export of railway equipments, engineering equipment and turnkey projects which later has diversified into agro commodities, industrial raw material, manufactured goods and bullion and further into solar energy. The petitioner being a registered dealer under the Andhra Pradesh Value Added Tax Act, 2005 and CST Act, 1956, had filed its returns for the years 2016-2017 and 2017-2018. Later it has filed revised returns. However, no tax, even as per the revised returns, was paid and later, a plea was taken that such revised returns were erroneously filed and there was no liability on the part of the



petitioner to pay any additional tax. The same has been rejected by the respondent no.2 *vide* impugned assessment order dated 30.05.2020.

4. A final show cause notice dated 13.03.2020 was issued directing the petitioner to appear for personal hearing on 23.03.2020 before the authorities along with copies of bill of entry and to produce the book of account for final check. It reveals that the total turnover was beyond the exemption which could be allowed and thus an order of assessment was passed.

5. Learned counsel for the petitioner submitted that after receiving the final show cause notice dated 13.03.2020, they had sent an e-mail on 20.03.2020 to the authorities concerned for extending the time till 30.04.2020, in view of global pandemic, for submission of all bill of entries for all the financial years. It was submitted that on 03.04.2020 partial bills of entries for the said period were sent through e-mail and time was sought for filing the rest after fifteen days from which the lockdown period gets over i.e., till 30.04.2020. Learned counsel submitted that without considering the partial submission of bills of entries and without giving them an opportunity of personal hearing, the order impugned has been passed, which is required to be interfered with.

6. Learned counsel for the petitioner submitted that under similar circumstances, a Division Bench of the Andhra Pradesh High Court as it then was, in **Soa Software Engineering India Private Limited V. Commercial Tax Officer [(2013) 57 APSTJ 103]** has observed that notice to the assessee has to be physically delivered whereas in the present case it has been sent through e-mail which itself is an illegality and the order passed on such e-mail was set aside. It was further



contended that a Division Bench of Telangana High Court in WP No.9791 of 2020, dated 14.07.2020, under similar circumstances, where time sought by the writ petitioner has sought time to file C-forms in order to avail concessional rates of tax, was not given, the assessment order was set aside and the matter was remitted to the Assessing Authority for fresh consideration. For similar proposition, reliance was also placed on the Judgment of the Division Bench of Telangana High Court in WP Nos.16164 and 15717 of 2020, dated 01.10.2020.

7. Learned counsel relied upon the order of the Hon'ble Supreme Court in the matter of extension of limitation in various proceedings due to Covid-19 virus and resultant difficulties faced by the litigants across the country, where the limitation for questioning such proceedings was extended from time to time and thus, it was submitted that the present writ petition has also been filed on 23.11.2021 as the last extension was till 02.10.2021. It was submitted that the petitioner has also been persuading respondent no.2 to reconsider the impugned order which has not been done forcing the petitioner to approach the Court.

8. Leaned Assistant Government Pleader submitted that the petitioner being a Central Government undertaking is required to act responsibly. It was submitted that the contention of there being no physical service of notice is totally misconceived for the reason that in the year 2016 as per Section 64(c) of the Andhra Pradesh Value Added Tax Rules, 2005, notice through e-mail is now an accepted mode of service.

9. Replying to the contention of the learned counsel for the petitioner that there has been no consideration of his case with regard



to no opportunity of personal hearing being given, it was submitted that the petitioner has ample opportunity of assailing the impugned order before respondent no.3 as has also been indicated in the order itself. Learned counsel submitted that the petitioner is required to appear before the respondent no.3, who is in a better position to consider the matter and the petitioner shall also have ample opportunity to explain the situation.

10. Having regard to the facts and circumstances of the case and submissions of learned counsel for the parties, the court does not find the present case to be one of such nature where the High Court should straightaway interfere, as there is an efficacious statutory remedy of appeal available to the petitioner. In the considered opinion of the court, the petitioner should first avail the statutory remedy and whatever points have been argued before this Court can very well be argued and appreciated before the Appellate Authority.

11. However, with regard to the decisions relied upon by the learned counsel for the petitioner, as noted above, the foundational facts are different. In the said cases, the writ petitioners had not themselves filed revised return as the fact in the present case. Further, the petitioner herein, despite filing a revised return, had also not deposited the tax for which he was liable as per the revised return, which was *suo motu* filed by it. Thus, there has been lapse on the part of the petitioner which now is sought to be explained as a mistake and error committed by the petitioner. Once the petitioner itself admits that there were lapses and error on its part, it cannot be termed that there has been gross miscarriage of justice by the authorities requiring interference by the High Court at the very first instance. Moreover, at the cost of repetition, all the points available to



the petitioner which have also been argued before the Court can very well to be raised and appreciated by the Appellate Authority.

12. Thus, taking an overall view and without expressing any opinion on merits of the matter, the writ petition stands disposed of giving liberty to the petitioner to approach respondent no.3/Appellate Authority against the order impugned. In view of the Hon'ble Supreme Court giving indulgence and extending the period of limitation with regard to various natures of litigation till 02.10.2021, in the present case, since limitation for filing an appeal is 30 days followed by another 30 days which is within the power available to the Appellate Authority to condone, since the petitioner had moved this Court within 60 days from 02.10.2021, we are inclined to grant indulgence in the matter of filing of the appeal and its hearing on merits by respondent no.3. Accordingly, liberty is granted to the petitioner for filing an appeal before respondent no.3 against the impugned order within three weeks from today and if the same is done, it shall be considered on merits in accordance with law by the Appellate Authority. It shall be open to the petitioner to raise all contentions, both on facts as well as in law, before respondent no.3, who shall pass a reasoned order after giving opportunity of personal hearing to the petitioner. No order as to costs.

13. Miscellaneous Applications, if any pending, also stand disposed of.

(AHSANUDDIN AMANULLAH,J)

(B.KRISHNA MOHAN,J)

Mjl/*



THE HON'BLE Mr. JUSTICE AHSANUDDIN AMANULLAH

AND

THE HON'BLE Mr. JUSTICE B. KRISHNA MOHAN

WRIT PETITION No.27836 2021

(DISPOSED OF)

29.11.2021

*Mjl/ **