THE HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
THE HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.451 of 2015

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

This writ petition is filed seeking directions by way of Mandamus to declare the action of the 1st respondent in not condoning the delay in preferring the appeal against the order dated 18.11.2013 in RR.No.43/2011-12 passed by the 3rd respondent-Deputy Commissioner (CT), Panjagutta Division, Hyderabad, and the consequential effectual order dated 25.11.2013 in PROC.No.2345/2001-02 (CST) passed by the 2nd respondent-Commercial Tax Officer, Somajiguda, Hyderabad, for the assessment year 2001-02 under the Central Sales Tax Act, as illegal and arbitrary.

Questioning the very same orders referred to above, the petitioner already approached this Court on earlier occasion by filing W.P.No.1684 of 2014 and the same was dismissed by this Court through order dated 12.09.2014 by recording a finding that the jurisdictional aspect raised by the petitioner was not tenable and that a specific finding was recorded with regard to the validity and legality of the order dated 18.11.2013 and the consequential effectual order dated 25.11.2013. In the said writ petition, on the contentions raised by the petitioner, this Court has passed an elaborate order by going into the merits of the case. After dismissal of the said writ petition, the petitioner carried the matter by way of statutory appeal before the 1st respondent Tribunal against the order dated 18.11.2013 passed by the 3rd respondent. As there was delay of 309 days in preferring the appeal, the office has returned the appeal stating that the Tribunal has power to condone the delay of 60 days only. Hence, this writ petition.

Heard Sri Milind G.Gokhale, learned counsel for the petitioner, and the learned Special Standing Counsel for Commercial Taxes appearing for the respondents.

Learned counsel for the petitioner submitted that the respondent authorities have got power to consider condonation of delay in view of the provisions of the Limitation Act, 1963. It is further submitted that as, in the earlier writ petition preferred by the petitioner, this Court has not gone into the merits of the order dated 18.11.2013 passed by the 3rd respondent and the consequential effectual order dated 25.11.2013 passed by the 2nd respondent, it is always open to the petitioner to avail the remedy of statutory appeal.

Having heard the learned counsel for the petitioner, we have perused the order passed in the earlier writ petition being W.P.No.1684 of 2014.

In the said W.P.No.1684 of 2014, the petitioner has questioned the impugned orders mainly on the ground of jurisdiction aspect and it was elaborately dealt with by this Court. Incidentally, this Court also referred to the merits of the case and upheld the validity of the impugned orders. The order passed by this Court in the said writ petition has become final. It is to be noticed that while dismissing the writ petition vide order dated 12.09.2014, this Court has not granted liberty to the petitioner to avail statutory remedy of appeal. However, the petitioner has filed statutory appeal assailing the very same orders, the validity of which is approved by this Court in W.P.No.1684 of 2014. We are of the view that in the absence of liberty being granted to the petitioner to approach the appellate authority, the petitioner could not have availed such remedy of appeal in view of the finality attained to the impugned orders through order dated 12.09.2014 in W.P.No.1684 of 2014 and it is not necessary to go into the aspect whether the appellate forum has power to condone the delay in view of the provisions of Section 14 of the Limitation Act. Hence, we do not find any merit in this writ petition.

Accordingly, the writ petition is dismissed. No order as to costs.

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

JUSTICE R. SUBHASH REDDY

Dr. JUSTICE B.SIVA SANKARA RAO

11.02.2015
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