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

WRIT PETITION No.273 of 2003

ORDER ***(per RSR,J):***

This Writ Petition is filed by the petitioner-assessee under the provisions of the A.P General Sales Tax Act, 1957 (for short 'the Act') questioning the order dated 10.12.2002 passed by the Appellate Deputy Commissioner (C.T), Guntur.

The petitioner-firm is a dealer and it was assessed to tax for the period from 01.04.2001 to 31.03.2002. It claimed certain exemptions. The Assessing Authority i.e., the Assistant Commissioner (Commercial Tax) (Intelligence), Nellore, has proposed to disallow the exemption claimed by the petitioner-dealer as second sales on the turnover for the period from 01.04.2001 to 31.03.2002 and after giving an opportunity, passed final order dated 25.10.2002 in Case No.86/2001-2002 determining the tax payable by the petitioner at Rs.10,28,701/-.

As against the same, the petitioner carried the matter by way of appeal before the Appellate Deputy Commissioner (C.T), Guntur. As the petitioner has not deposited the disputed tax of Rs.1,28,588/-, which is equivalent to 12.50% of the tax, as per amended Section 19(1) of the Act, the Appellate Deputy Commissioner has passed the impugned order rejecting the appeal *in limini*.

It is the case of the petitioner that the requirement of pre-deposit of 12.50% has come into statute by way of amendment to Section 19(1) of the Act w.e.f. 30.11.2001, whereas the assessment of tax by the Assistant Commissioner is for the period from 01.04.2001 to 31.03.2002. Therefore, it is not required to deposit 12.50% on the entire tax. It is submitted that even if it is required to pay 12.50% of tax, the same has to be paid only on the turnover subsequent to 30.11.2001, but not for the earlier period.

Counter-affidavit is filed on behalf of the respondents denying the petition averments. However, it is admitted that the proviso to Section 19(1) of the Act was introduced w.e.f. 30.11.2001 and therefore, it does not apply to the assessment periods anterior to the said date. Further, it is pointed out that the petitioner-assessee in the ground of appeal failed to disclose the exact period of the turnover assessed for taking into consideration the plea of the petitioner that subsequent to the said period, the amendment has come into force.

Heard both sides.

From a perusal of the order dated 25.10.2002 passed by the Assessing Authority, it is clear that the tax, which is determined to be payable by the petitioner at Rs.10,28,701/- is for the tax period 01.04.2001 to 31.03.2002. Admittedly, earlier to 30.11.2001, there was no provision for payment of the disputed tax to entertain the appeal by the Appellate Deputy Commissioner. Further, a perusal of the impugned order dated 10.12.2002 passed by the Appellate Deputy Commissioner discloses that he demanded payment of Rs.1,28,588/- i.e., 12.50% of the disputed tax on the turnover covering the period from 01.04.2001 to 31.03.2002. As it is not in dispute that the amendment has come into force only from 30.11.2001, we are of the view that the petitioner is required to deposit only 12.50% on the turnover tax subsequent to the amendment, but not for the earlier period. In that view of the matter, the matter requires reconsideration by the Appellate Deputy Commissioner to determine the tax payable as condition precedent to entertain the appeal having regard to the amendment carried out to Section 19(1) of the Act.

For the aforesaid reasons, the impugned order is set aside. The matter is remanded to the Appellate Deputy Commissioner (C.T), Guntur, to reconsider the same afresh and pass order for pre-deposit by taking into consideration the amendment made to Section 19(1) of the Act, which came into force w.e.f 30.11.2001. On such determination, the petitioner shall pay the same within a period of two weeks from the date of receipt of a copy of the order of the Appellate Deputy Commissioner. On such payment, the Appellate Deputy Commissioner shall treat the appeal as having been complied with, within the time frame and dispose of the same on merits.

The Writ Petition is accordingly allowed. There shall be no order as to costs.

Consequently, pending miscellaneous applications, if any, shall stand closed.

R.SUBHASH REDDY, J

Date: 27.02.2015

Dr.B.SIVA SANKARA RAO, J

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(Order of the Bench delivered by the Hon'ble Sri Justice R. Subash Reddy)

Date: 27.02.2015

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