THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

AND

THE HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.6838 of 2004

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

This writ petition is filed seeking a Writ of Mandamus, declaring the order, dated 19.04.2003, in Appeal No.E469/01-02 passed by the 1st respondent confirming the assessment order dated 07.09.2000 passed by the 2nd respondent, as illegal and arbitrary.

The petitioner is a Rice Miller and is an assessee on the rolls of the 2nd respondent-Commercial Tax Officer, Ramachandrapuram, East Godavari District. For the assessment year 1997-98, the petitioner claimed exemption under Section 5 (3) of the Central Sales Tax Act (for short 'the Act') on the turnover of Rs.91,95,610/- towards export sale of rice. However, by assessment order, dated 07.09.2000, the 2nd respondent disallowed the said exemption sought for on the ground that the petitioner did not file declaration in Form-H under Rule 12 (1) of the CST (R & T) Rules, 1957 (for short 'the Rules'). Aggrieved thereby, the petitioner carried the matter in appeal before the 1st respondent-Appellate Deputy Commissioner. Even before the 1st respondent, the petitioner has not chosen to file Form-H during pendency of the appeal and also has not appeared when the matter was called for hearing. In that view of the matter, the appeal was dismissed by order dated 19.04.2003, confirming the order of the 2nd respondent. As against the same, the present writ petition is filed.

Heard learned counsel for the petitioner and the learned Special Standing Counsel for Commercial Taxes appearing for the respondents.

Against the order of the 1st respondent, the petitioner has a remedy of filing further appeal, under Section 21 of the APGST Act, before the Sales Tax Appellate Tribunal, but the same could not be filed in view of his ill-health during the relevant time. This Court has already held that the appellate authority has no power to condone the delay in filing the appeal, if the appeal is not filed within the prescribed period of time. Even there is no explanation for not filing Form-H as contemplated under Rule 12 (1) of the Rules read with Section 5 (3) of the Act so as to claim exemption. In the absence of filing declaration in Form-H, the respondents have rightly disallowed the exemption claimed by the petitioner. Hence, we do not find any merit in the writ petition so as to interfere with the impugned orders and the writ petition is liable to be dismissed.

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

The miscellaneous petitions, if any pending, shall stand closed.

R.SUBHASH REDDY,J

Dr. B.SIVA SANKARA RAO,J

23.03.2015

v v