THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE S.RAVI KUMAR

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SPECIAL APPEAL No.12 of 2001

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JUDGMENT: (per Hon'ble Sri Justice Ramesh Ranganathan)

This appeal, under Section 23 (1) of the Andhra Pradesh General Sales Tax Act, 1957 (for brevity, 'the Act'), is preferred against the order passed by the Commissioner, Commercial Taxes dated 11.08.1997 revising the order of the Appellate Deputy Commissioner, Panjagutta dated 16.08.1993.

The appellant is a Contractor and was awarded a contract for the design, manufacture, assembling erection, testing, commissioning etc., of 'Ash handling plants' by Vijayawada Thermal Power Station, NTPC etc. For the assessment year 1988-89, the Commercial Tax Officer, Basheerbagh Circle, Hyderabad assessed them to tax by his order dated 25.02.1993. As against the exemption claimed by the assessee in its entirety, on the ground that the entire purchase of goods for the purpose of executing the contracts was from outside the State, the assessing authority allowed exemption for Rs.1,71,19,860/- and determined the taxable turnover to be Rs.6,47,10,840/-. Aggrieved thereby, the appellant preferred an appeal to the Appellate Deputy Commissioner who, by his order dated 16.08.1993, allowed the appeal relying on the judgment of the Supreme Court in **Gannon Dunkerley & Company v. The State of Rajasthan**. The matter was remanded back to the assessing authority to ascertain whether or not the sales were in the course of inter-State trade or commerce. It is this order of the Appellate Deputy Commissioner which was revised by the Commissioner, Commercial Taxes.

While several submissions are put forth by Sri S. Dwarakanath, learned counsel for the appellant, on merits, it is wholly unnecessary for us to examine them, as the appeal must be allowed on the ground that the order of the Commissioner is beyond limitation. Section 20 (1) of the Act confers power on the Commissioner to revise orders including among others, the order passed by the Appellate Deputy Commissioner. Section 20 (3) of the Act stipulates that the power, conferred under Section 20 (1) of the Act, shall be exercised only within such period not exceeding four years from the date on which the order was served on the dealer, as may be prescribed. The four year period, commencing from the date of the order of the appellate authority i.e. 16.08.1993 ended by 15.08.1997.

While the order of the Commissioner dated 11.08.1997 is within the period of four years from the date of the order of the Appellate Deputy Commissioner dated 16.08.1993, the question which necessitates examination is whether the order of the Commissioner was, in fact, passed on 11.08.1997 or, as contended by Sri S.Dwarakanath, learned counsel for the appellant, is ante-dated only for the purposes of bringing it within the period of limitation.

Sri S.Dwarakanath, learned counsel for the appellant, would draw attention of this Court to the order passed by the Sales Tax Appellate Tribunal ("STAT" for short) in T.A.No.683 of 2000 dated 21.03.2001, in support of his submission that the order is ante-dated. It is necessary to note that, pursuant to the order passed by the Commissioner, the assessing authority passed consequential orders on 21.08.1997. The appellant questioned the consequential order by way of an appeal before the Appellate Deputy Commissioner and, on the appeal being dismissed, the appellant invoked the jurisdiction of the STAT. In its order, in T.A.No.683 of 2000 dated 21.03.2001, the STAT has recorded its finding that the order of the Commissioner had not been served on the appellant.

Sri S. Dwarakanath, Learned counsel, would submit that the very fact that the STAT had, as late as on 21.03.2001, held that the order of the Commissioner had not been served on the appellant is sufficient proof of the order of the Commissioner having been ante-dated only for the purpose of limitation.

We called for the original records from the office of the Commissioner for Commercial Taxes, and the records have been placed for our perusal today. Learned Special Standing Counsel for Commercial Taxes would draw our attention to several notices, issued by the Commissioner to the appellant, in support of his submission that all these notices were issued calling upon the appellant to show cause why the order of the Appellate Deputy Commissioner should not be revised; and it is not conceivable that the Commissioner would not have passed the order on 11.08.1997 as is reflected in the order itself. All these notices preceded the revisional order of the Commissioner dated 11.08.1997. The record placed before us discloses that the order of the Commissioner dated 11.08.1997 was despatched to the appellant only on 23.02.2001, more than 3½ years after 11.08.1997 when the Commissioner is said to have passed the revisional order.

In **State of Andhra Pradesh v. M.Ramakishtaiah and Company** the Supreme Court held that, in the absence of any explanation for the delay in service of the copy of the order, it must be presumed that the order was not made on the date it was purported to have been made; and it could only have been made after expiry of the prescribed four year period. No explanation is forthcoming from the respondent for the inordinate delay of 3½ years in serving a copy of the revisional order of the Commissioner on the appellant.

In view of the law laid down by the Supreme Court in **M. Ramakishtaiah[2],** absence of any explanation would require this Court to presume that the order was not made on the date on which it was purported to have been made; and that it could only have been made after expiry of the four year period of limitation. In view of the presumption which this Court is required to make, and in the absence of any explanation for the delay of more than 3½ years in service of a copy of the order of the Commissioner on the appellant, the order of the Commissioner must be held to have been passed beyond limitation. The order, under challenge in this appeal, is set aside.

The Special Appeal is allowed. The miscellaneous petitions pending, if any, shall stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

S.RAVI KUMAR, J

11th June, 2015.

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