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

WRIT PETITION No.3580 of 2003

Order: (Per Justice R. Subhash Reddy)

The petitioner is a partnership firm engaged in the business of crushing stone boulders into chips and is a registered dealer under the provisions of the A.P. General Sales Tax Act, 1957

(for short "the Act"), on the rolls of the 2nd respondent-the Deputy Commercial Tax Officer, Ganapavaram. The petitioner was assessed for the year 2000-01 by the 2nd respondent on the gross and net turnovers of Rs.9,07,400.00 and Rs.1,41,759.00 respectively under the Act, vide proceedings No.G.I.No.12297/2000-01. Subsequently, the 1st respondent-Commercial Tax Officer (FAC) Chilakaluripet, has revised the assessment by the impugned order dated 03.12.2002 vide proceedings No.G.I.No.12297/2000-2001, on the ground that, in the assessment order, the petitioner was allowed exemption on turnover of Rs.7,54,300.00 erroneously, on the ground that the petitioner has effected such sales of metal chips to the registered dealers in the State. In the revision order, it is alleged that the registered dealer to whom the petitioner sold the above stone chips is/are contractors who is/are registered with the Department under works contract. The work contractor consumed stone chips purchased from the petitioner in laying roads and paying tax under Section 5(F) of the Act; as such there is no subsequent sale of stone chips that has taken place in the hands of the contractor; the same resulted in losing of tax by the State on the sales of these stone chips made to the contractor; the charging Sections 5 and 5(F) are distinct in nature. To the show-cause notice issued pursuant to revised assessment, petition was filed on 22.11.2002 seeking grant of time till 15.12.2002 by affixing Rs.2/- court fee stamp on the petition, but on the ground that the same is not in accordance with Rule 58(A) of the A.P. General Sales Tax Rules (for short "the Rules") the request for adjournment was not considered and the impugned order is passed on the ground that no further objections are filed by the petitioner.

2. It is mainly the case of the petitioner that the impugned assessment order is passed on an erroneous premise that the stone chips purchased by the contractor from the petitioner and consumed in the works contract do not amount to "sale". It is further the case of the petitioner, that during the relevant time, i.e., for the assessment year 2001-02, tax liability was on the last seller and the same is amended only with effect from 12.12.2001 by substituting "last seller" with "first seller" in entry 32 of Schedule I, by Act 25 of 2002. It is further the case of the petitioner that though it has requested for adjournment for filing

objections, the same is rejected erroneously on a technical ground, viz., the adjournment petition was not accompanied by Rs.50/- pay order as required.

3. Heard learned counsel for the parties.

4. Though the Writ Petition is of the year 2003, no counter-affidavit is filed.

5. It is not in dispute that sales tax on metal chips was to be levied on the last sale point prior to 12.12.2001. In the instant case, tax period relates to the 2000-01, at which point of time liability for payment of tax was on the last seller of goods. On a perusal of the impugned order, it appears that the 1st respondent has proceeded on the premise that as much as stone chips purchased by the contractor/s from the petitioner were consumed on the works contract, as such, it does not amount to sale. It is true, before revision order was passed, show-cause notice was given and on behalf of the petitioner, petition was moved for adjournment by affixing Rs.2/- stamp. However, the same is rejected on the ground that such petition is not accordance with the Rules inasmuch as Rs.50/- stamp was not affixed.

6. If proper stamp was not affixed, respondents ought to have informed the petitioner to affix the deficit stamp duty, but should not have passed orders without giving further opportunity of filing objections. The plea of the

petitioner, viz., that metal chips sold by it to the contractor/dealer in the State of Andhra Pradesh, which were used by the dealer/purchaser in the works contract, constitutes deemed sale, is an issue which requires consideration by the respondents. Inasmuch as the petitioner has filed objections pursuant to the notice issued by the respondents before revision order is passed and though the Writ Petition is of the year 2003, no counter-affidavit is filed, we deem, it is a fit case to set aside the order dated 03.12.2002 passed vide proceedings No.G.I.No.12297/2000-2001, by the 1st respondent.

7. Accordingly, the order dated 03.12.2002 passed vide proceedings No.G.I.No.12297/2000-2001, by the 1st respondent, is set aside and the matter is remitted for fresh consideration. Petitioner is granted eight weeks from today for filing objections. On receipt of the objections of the petitioner, or otherwise, within the timeframe referred above, 1st respondent shall consider the matter afresh and pass appropriate orders in accordance with law.

8. The Writ Petition is allowed to the extent indicated above. No order as to costs. As a sequel, miscellaneous petitions if any pending in the Writ Petition stand closed.

R. SUBHASH REDDY, J

Dr. B. SIVA SANKARA RAO, J

March 9, 2015
Note: C.C. in a week
B.O.
MRR