

* THE HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION Nos. 18757, 18770 and 18792 of 2015

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24.08.2015

Between

South Central Railway Catering Unit, Guntakal,
Anantapur District

... Petitioner

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\$ The State of Andhra Pradesh,
Rep by Commercial Tax Officer, Guntakal,
Anantapur District, and 2 others

-

... Respondents

! COUNSEL FOR PETITIONER: Sri P. Gangarami Reddy

^ COUNSEL FOR RESPONDENTS: GP for Commercial Tax

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> Head Note:

? CITATIONS:

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WRIT PETITION Nos. 18757, 18770 and 18792 of 2015

Between:

South Central Railway Catering Unit, Guntakal,
Anantapur District

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... Petitioner

and

The State of Andhra Pradesh,
Rep by Commercial Tax Officer, Guntakal,
Anantapur District, and 2 others

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... Respondents

JUDGMENT PRONOUNCED ON: 24th August, 2015

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HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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1 Whether Reporters of local newspapers Yes / No
 may be allowed to see the Judgment?

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2 Whether the copies of judgment may be Yes / No
 marked to Law Reporters/Journals

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3 Whether their Ladyship/Lordship wish to Yes / No
 see the fair copy of the Judgment?

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THE HON'BLE SRI JUSTICE G. CHANDRAIAH

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THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION Nos. 18757, 18770 and 18792 of 2015

COMMON ORDER: (per Hon'ble Sri Justice G. Chandraiah)

W.P.No.18757, 18770 and 18792 of 2015 are filed against the dismissal of T.A.Nos.1275, 1273 and 1274 of 2007, respectively. T.A.Nos.1275, 1273 and 1274 of 2007, were filed before the Tribunal questioning the levy of tax under Section 5C of the A.P. General Sales Tax, 1957 (for short, 'the Act') to the tune of Rs.11,80,638/-, Rs.13,31,553/- and Rs.12,52,415/-, for the Assessment Years 2002-03, 2001-02 and 2000-01, respectively. The subject matter of these writ petitions being identical, they are taken up together for disposal by this common order.

2. To state in brief, the case of the petitioner is that it is a Catering Unit under the South Central Railway. It caters to the requirements of travelling public. For the purpose of catering, the petitioner engages vending boys for selling edible items like biscuits, ice creams and soft drinks. As the vending boys have no particular place for selling the items, and move from place to place on the platform and also in the trains, the petitioner has been claiming exemption of tax under second sales, on the plea that Section 5C of the Act has no application to such transactions, and the said plea was accepted by the 1st respondent and the assessment was also completed by order dated 20.02.2004. While so, the 2nd respondent undertook revisional proceedings under Section 20 of the Act, and held that Section 5C of the Act is applicable to the transactions of the petitioner and hence determined the tax payable as Rs.11,80,638/-, Rs.13,31,553/- and Rs.12,52,415/-, respectively; and consequently the 1st

respondent passed orders levying the tax as determined by the 2nd respondent. Questioning the levy of tax, the petitioner filed appeals before the Tribunal along with stay applications before the 3rd respondent seeking stay of collection of tax in dispute. The 3rd respondent rejected the stay applications. Aggrieved thereby, the petitioner filed W.P.Nos.7928, 7925 and 7924 of 2006 before this Court, wherein this Court granted stay on the condition of the petitioner depositing half of the demanded amount. The petitioner complied with the conditional order. While so, the Tribunal dismissed the appeals for default by orders dated 06.09.2011, however, by observing that the petitioner is at liberty to file restoration petitions, under sub-section 5A of Section 21 of the Act, within 30 days from the date of communication of the dismissal orders. The petitioner filed restoration petitions but the Tribunal rejected the restoration petitions stating that they were filed beyond the prescribed period of limitation. Hence, these writ petitions.

3. Heard learned counsel for the petitioner and the learned Government Pleader.

4. The impugned order dated 06.09.2011 reads as under:

“The appellant having failed to appear before the Tribunal either in person or by his counsel when the appeal is being called on for hearing from time to time, due to which the Tribunal has not been able to hear either of them for its disposal on merits and its having been pending since 2007, it is dismissed for default under sub-section 5A of Section 21 of the APGST Act, 1957, with a liberty to the appellant to make an application under the proviso to it within 30 days from

the date of communication of the order of dismissal, by showing sufficient cause for his non-appearance, for re-admission of the appeal by giving notice thereof to the opposite party.”

5. With regard to restoration petitions before the Tribunal, learned counsel for the petitioner submits that the default orders dated 06.09.2011 were communicated to the petitioner on 26.12.2011 and a copy of the said orders was sent to the Deputy General Manager (Law) who advised the petitioner to file restoration petitions and that thereafter restoration petitions were filed before the Tribunal on 30.04.2012 and the Tribunal rejected the petitions on 02.05.2012 on the ground that they were filed beyond the period of limitation. Learned counsel further submits that on the advise of the Deputy General Manager (Law), the petitioner prepared writ petitions for challenging the rejection of restoration petitions and the petitioner had put the writ petitions for the approval of competent authority on 04.01.2013 and that the said files were misplaced during KAIZON (5S) operation and the files could be traced out only on 07.04.2015. To put it succinctly, the petitioner pleads procedural and administrative delays as a reason for not filing restoration petitions before the Tribunal within the period of limitation; and also for approaching this Court with abnormal delay.

6. Learned counsel for the petitioner except reiterating the averments and pleading procedural delays, could not support his case with a case law whereunder this Court can entertain a writ petition which is filed at a belated stage with an abnormal delay that too questioning a default order as against which

restoration petitions also came to be rejected due to delay in filing.

7. We are of the view that a remedy that is not provided under the law or the Statute which confers powers on the concerned authorities, this Court cannot confer powers that are not there or provided for under the Statute, and therefore, we do not see any ground to entertain the writ petitions.

8. Hence, the writ petitions are dismissed for laches. No costs. Miscellaneous petitions, if any pending, shall stand closed.

G. CHANDRAIAH, J

CHALLA KODANDA RAM, J

24th August, 2015

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HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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