HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

T.R.C.Nos.264 of 2003 & 23 of 2004

COMMON ORDER: (Per Dr.Justice B.Siva Sankara Rao)

T.R.C.No.264 of 2003:

1) This Tax Revision Case is maintained under Section 22(1) of the Andhra Pradesh General Sales Tax Act, 1957 (for short, 'the APGST Act') by the petitioner assessee M/s.Veekay Oil Products, Piduguralla by its proprietor Sri V.Pitchaiah against the State of Andhra Pradesh impugning the order dated 10.03.2003 of the tax appeal T.A. No.684 of 1998 on the file of the Sales Tax Appellate Tribunal, Hyderabad dismissing the appeal confirming the order of the Appellate Deputy Commissioner, Commercial Taxes, Guntur which in turn confirmed the assessment order of the Commercial Tax Officer, Piduguralla for the assessment years 1993-94.

T.R.C.No.23 of 2004:

2) This Tax Revision Case is maintained under Section 22(1) of the APGST Act by the petitioner assessee M/s.Veekay Oil Products, Piduguralla by its proprietor Sri V.Pitchaiah against the State of Andhra Pradesh impugning the order dated 16.04.2003 of the tax appeal T.A. No.683 of 1998 on the file of the Sales Tax Appellate Tribunal, Hyderabad dismissing the appeal confirming the order of the Appellate Deputy Commissioner, Commercial Taxes, Guntur which in turn confirmed the assessment order of the Commercial Tax Officer, Piduguralla for the assessment years 1992-93.

3) The factual back ground in brief culminating to maintain the revisions respectively are that the revision petitioner M/s.Veekay Oil Products represented by its proprietor V.Pitchaiah is a dealer in

Sunflower Seed, Sunflower Oil and Sunflower Cake etc., registered on the rolls of the Commercial Tax Officer, Piduguralla. For the assessment years 1992-93 against Nil returns filed by the assessee, there was escaped turnover detected with reference to the records like stock registers maintained at the check post and information gathered from refineries and the purchasing dealers and also bank accounts, it revealed that the total sales affected by the dealer during 1992-93 were not reported through monthly returns and not paid the taxes actually due therefrom a notice was issued in GI No.2473/92-93, dated 28.05.1994 served on the dealer on 31.05.1994 and having requested to produce accounts along with details of the sales and oil, de-oil cake etc., for final assessment and the dealer instead of producing the records claimed as records were destroyed in fire accident and asked to supply copies of weigh bills, invoices, delivery challans to give detailed reply and the same was complied pursuant to the writ petition direction he obtained and the dealer filed objections dated 21.07.1994 by denying the sales and purchased and alleged appreciation of the same and those may be the untrue or fake transactions no way connected with his business and those are created. It is there from best judgment assessment in the absence of account books claiming as destroyed in fire accident was made with net turnover proposed to be determined as Rs.94,44,079/- viz., sunflower seed purchase of Rs.38,08,720/- taxable at 4%, sale of sunflower oil Rs.41,67,086/- tax at 4% + 1% + 10% and also at same rate of sale of sunflower oil cake of Rs.14,68,263/- and it is after considering further objections to the show-cause notice for best judgment assessment, the assessment was made on the escaped turnover under Section 14(4) of the APGST Act with a tax liability of Rs.4,62,293/- by demanded the same in form B-III.

4) Equally in the assessment year 1993-94 Nil returns filed for the months of 4/93 to 9/93 and no returns filed of 10/93 to 3/94 by reporting cross turnover of Rs.7,14,945/-, exempted turnover of Rs.5,08,425/- from which net turnover of Rs.2,06,520/- and on cross verification of the transactions, notice was issued to the dealer dated

28.05.1994 regarding sunflower seed purchased and transported through check post, sale of sunflower oil to various customers with a direction to produce account books of 1993-94 for perusal with reference to the transactions for final assessment and even he was served with notice dated 31.05.1994. He disputed the notice as vague and untrue and not furnished any records by further saying those records were also destroyed in fire accident and to supply of copies of weigh bills, invoices, delivery challans etc., to give a detailed reply and those were supplied pursuant to the orders of the High Court in W.P. and thereafter he filed his objections dated 21.07.1994 disputing the transactions saying no way connected and those are untrue and fake transactions falsely created and there from a notice was issued on 18.01.1995 proposing best judgment assessment from the material available on record, for final assessment from estimated turn over of purchase of sunflower seed of Rs.31,78,904/-, sale of sunflower oil Rs.41,94,196/- and sale of sunflower seed of Rs.14,29,712/- and after considering the turnover wrongly reported with utterly low net turnover proposed of Rs.95,17,763/- to tax the same at 4% for the seed 4% + 1% + 10% for oil and cake and for the notice served he filed further objections and on considering the same arrived the tax due of Rs.4,72,275/- and after deduction of tax paid of Rs.8,259/- demanded in Form B-III the tax due of Rs.4,64,016/-. It is impugning the said assessment orders, the appeals before the appellate Deputy Commissioner maintained that were also in supporting the reasons assigned by the assessment orders confirmed. So also, the dealer went unsuccessful before the Sales Tax Appellate Tribunal as referred supra.

5) Now, coming to the impugned orders of the Sales Tax Appellate Tribunal in the revision, a perusal of the grounds of revision at para 10, question of law formulated is (1) whether the Sales Tax Appellate Tribunal is correct in accepting the extracts obtained from the check posts without any corroborative evidence in support thereafter, (2) Whether the Sales Tax Appellate Tribunal is correct in forming the estimation of turnovers with reference to sales with no corresponding

consumption of power (electricity in the manufacturing premises of the dealer) and as to denial of opportunity for cross-examination of witnesses.

6) The cross-examination is not as of right for even no worth material placed muchless any case made out to afford opportunity in cross-examination to elicit any material required for consideration. In fact, from the above questions of law, claimed there is no question of law involved practically. No doubt so far as the estimation of turnovers on the basis of consumption of electricity is concerned, it is only one of the permissible modes and that too when there is no other evidence and only on showing there is any direct nexus between the consumption of electricity and the turn over, without which that cannot be taken as a basis as held by this Court in ***Venkata Ramana Stone Crushers Co., V. State of Andhra Pradesh***. Thus, said contention has no legs to stand in the absence of any material to substantiate, and that too, when the same is not the basis by itself. Coming to the limitation aspect raised when there is a suppression of the turn over, it is the extended limitation that is applicable, that also meted in the impugned order passed by the Tribunal confirming the order of the appellate authority. Importantly the assessing authority when taken every possible means to prove the nature of transactions and there were suppression of the estimated turnovers by Nil return or by return showing absolutely low turn over and the same was detected on cross verification from the extracts of the check post and also information from the banks and purchasing dealers which are very clearly discussed in corroboration of one to the other to substantiate with reasons to the best judgment assessment, that too after supply of all the copies and even when the assessee (revision petitioner) failed to deny any of the transactions through the books of accounts, weigh bills and other documentary evidence, but for by a stray sentence of all are as if fake or untrue, that is not suffice. Further more, the assessee who obtained weigh bills from the assessing authority failed to produce the triplicate copies and render account for its use when called for and came up with a plea of records destroyed

as if in a fire accident with no any basis even to say muchless to substantiate. On the other hand the assessment order clearly speaks with reasons from what is discussed supra that was confirmed by the Appellate Deputy Commissioner of said version is untrue from the recorded evidence, but intentionally for evasion of tax by filing Nil returns or returns with utterly low turnover, there is for this Court while sitting in revision against the impugned order of the Sales Tax Appellate Tribunal in the two respective revisions nothing to interfere.

7) Accordingly, both the revisions are dismissed.

8) Miscellaneous Petitions, if any, pending in this Tax Revision Case shall stand closed. No costs.

R. SUBHASH REDDY, J

Dr. B. SIVA SANKARA RAO, J

7th April, 2015

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