THE HON'BLE SRI JUSTICE K.C. BHANU
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Special Appeal No.1 of 2014

JUDGMENT:(per Justice M. Seetharama Murti)

The assessee/dealer having been aggrieved of the orders dated 31.08.2013 of the Commissioner, Commercial Taxes, A.P. Hyderabad passed in CCT's Ref.Nos.LV(4)/10/2013 had preferred this special appeal under Section 23(1) of the APGST Act read with Rule 41 under the Rules made under the said Act.

2. We have heard the submissions of the learned counsel for the appellant/dealer and the Special Standing Counsel for Commercial Taxes. We have perused the material record.

3. The facts which are necessary for consideration, in brief, are as follows: - 'The assessee was finally assessed by the Commercial Tax Officer, Gandhi Chowk Circle, Tenali and an assessment order in G.I.No.21207/2004-05 (CST) dated 06.03.2006 was passed. The CTO had levied tax at the rate of 4% on the turnover related to the first purchases of Turmeric from the market yard and ryots. The tax levied was paid by the assessee. In respect of the CST assessment, the CTO by his order dated 06.03.2006 had considered the relevant turnover in that regard as 'exempt turnover'. The Deputy Commissioner, Commercial Taxes, Guntur having considered the orders of the CTO as prejudicial to the interests of the revenue of the State had issued a revisional show cause dated 20.11.2008 by exercise of powers vested in him under Section 20(2) of the APGST Act and had proposed to disallow the exemption on a turnover of Rs.26,28,448/- by treating the 'F' forms filed by the dealer as invalid as he had found certain defects in the 'F' forms submitted by the dealer. However, the Deputy Commissioner, followed the terms of G.O.Ms.No.296 Revenue (CT-II), Dept, Dt.09.04.1999, which came into force w.e.f 01.04.1995, and which had exempted the turnover from payment of tax under the CST Act on the sales of Turmeric in the course of interstate trade or commerce, provided the tax has been levied and collected on such goods under the provisions of the APGST Act and had therefore, dropped the proposal for revision and had further directed the CTO concerned to cross verify the genuineness of the transactions as there was no concrete evidence to prove that the 'F' declaration forms filed are invalid. By the orders impugned, the Commissioner, Commercial Taxes, Hyderabad had proposed to revise the assessment under Section 9(2) of the CST Act read with Section 20(2) of the APGST Act insofar as it related to the exemption allowed by the assessing authority as well as the revisional authority (Deputy Commissioner) and had proposed to bring the turnover of Rs.26,28,448/- related to invalid 'F' forms to tax at the rate of 10%. Finally by the orders impugned, the Commissioner while over-ruling the objection of the dealer that the revision proposed was barred by limitation had held that the 'F' forms filed by the dealer are not valid and had construed that the said forms are not issued by the competent sales tax authorities of the concerned States and had noted that the dealers could not file 'C' forms to avail the exemption of tax from CST Act as per GO.Ms296 dated 09.04.1999 read with provisions of the sub Section 4 and sub Section 5 of Section 8 as amended from 13.05.2002 and had confirmed the proposal in his show cause notice while exercising the powers vested in him under Section 9 (2) of the CST Act read with 21 of the APGST Act. Therefore, the aggrieved assessee is before this court.'

4. Apart from the contention related to bar of limitation, the only other point for consideration is as to whether the Commissioner having found that the 'F' forms were invalid ought to have given an opportunity to the assessee for proving the genuineness and/or for rectification of the 'F' forms and resubmit the same for fresh consideration by the assessing authority in view of the finding of the Deputy Commissioner that there is no concrete evidence to prove that the 'F' forms filed are invalid.

5. There is no dispute about the facts. Both the learned counsel submitted that the matter be remanded to the assessing authority by giving an opportunity to the assessee to have the 'F' forms rectified and resubmit the same for fresh consideration by the assessing authority and passing orders in accordance with the procedure established by law. It is represented that the issue of limitation need not be gone into while remitting the matter.

6. In view of the submissions, there is no need to go into the question of limitation involved in this special appeal and also the merits of the other contentions which are raised in the appeal and express any opinion on such contentions as the matter is being remitted to the assessing authority for fresh decision on merits on all the relevant aspects as desired by both the sides.

7. Accordingly, the Special Appeal is allowed and the impugned order is set aside and the matter is remitted to the Commercial Tax Officer, Gandhi Chowk, Tenali giving liberty to the dealer to raise all questions of fact and law, which the law permits, and resubmit the rectified 'F' forms to enable the assessing authority to pass orders afresh on the relevant issues on merits and in accordance with the procedure established by law. However, before passing the final orders, the CTO is directed scrutinize the 'F' forms filed by the dealer and point out the defects and give an opportunity to the assessee to rectify and resubmit the rectified and valid 'F' forms for fresh consideration. The above directions shall be complied with and final orders on merits shall be passed within a period of six (06) months from the date of the receipt of a copy of this judgment.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

K.C. BHANU, J

M. SEETHARAMA MURTI, J

12.02.2015
Vjl