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

WRIT PETITION No.12517 of 2015

ORDER : (*Per Hon'ble Sri Justice R.Subhash Reddy*)

Petitioner is a registered dealer and an assessee on the rolls of the 3rd respondent-Commercial Tax Officer, Mehdipatnam Circle, Hyderabad under the provisions of the APVAT Act (for short 'the Act') and is engaged in the business of Gypsum Galvanised Plain corrugated column sheets. Petitioner purchases material from VAT registered dealers both within and outside the State of A.P., but is effecting sales within the State of A.P only, and as such, he claimed Input Tax Credit (ITC). The assessing authority i.e., the Commercial Tax Officer, N.S.Road Circle, Hyderabad, has passed the assessment order dated 26.12.2013, disallowing ITC claimed by the petitioner in his returns, and determined the tax payable by the petitioner at Rs.18,17,094/-. As against the same, the petitioner has filed an appeal before the Appellate Deputy Commissioner (CT), Punjagutta Division, Hyderabad, within the stipulated time as contemplated under law. As per the second proviso to Section 31 (1) of the Act, the petitioner is required to pay 12.5% of the disputed tax while filing the statutory appeal and submit proof of such payment. According to the petitioner, along with the appeal, he has issued cheque for the amount representing 12.5% of the disputed tax, but the same was not honoured by the Bank for “insufficient funds”, for which the respondent authorities have issued notice and, in response to the same, the petitioner has deposited such amount by way of demand draft. Thereafter, the impugned order dated 16.03.2015 is passed rejecting the admission of the appeal on the ground that 12.5% of the disputed tax was made beyond the prescribed period of 60 days from the date of receipt of a copy of the assessment order.

Heard learned counsel for the petitioner and learned Special Standing Counsel for Commercial Taxes appearing for the respondents.

It is submitted by learned counsel for the petitioner that when the cheque issued by the petitioner was dishonoured, immediately the petitioner has paid 12.5% of the disputed tax by way of demand draft. It is also submitted that such payment made is in continuation of the cheque issued in proof of payment as provided under Section 31 (1) of the Act.

On the other hand, learned Standing Counsel appearing for the respondents submitted that as 12.5% of the disputed tax is paid after 87 days from the date of receipt of a copy of the assessment order, but not within the time limit of 60 days as prescribed under the provisions of the Act, the appellate authority has rightly rejected the appeal placing reliance on the judgment of this Court in **M/s. Ankamma Trading Company vs. The Appellate Deputy Commissioner**[1]**.**

In this case, it is not in dispute that within the stipulated time limit of 60 days from the date of receipt of a copy of the assessment order, the petitioner has filed proof of payment by issuing cheque representing 12.5% of the disputed tax. When the said cheque was dishonoured, the respondent authorities have issued notice to the petitioner and thereafter the petitioner has made arrangement for payment of 12.5% of the disputed tax by way of demand draft. Such payment made by way of demand draft is in continuation of the cheque, which was issued by him within 60 days time, and prior to consideration of appeal for admission. In that view of the matter and having regard to the peculiar facts and circumstances of the case, we are of the view that the ratio laid down by this Court in **Ankamma's** case referred supra cannot be applied. As it is conceded that the appeal is substantive remedy to the aggrieved party and having regard to the fact that within the time frame, the petitioner has issued cheque and that he has complied with the notice of the respondents by making payment by way of demand draft, we deem, it is a fit case to direct the respondents to treat such payment to have been made within the time frame of 60 days as contemplated under law.

For the aforesaid reasons, the writ petition is allowed setting aside the order dated 16.03.2015 passed by the Appellate Deputy Commissioner and the matter is remanded to the appellate authority to consider it afresh on merits and dispose of the same in accordance with law.

As a sequel, pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

JUSTICE R. SUBHASH REDDY

Dr. JUSTICE B.SIVA SANKARA RAO

27.04.2015
v v

[1] 2011 (53) APSTJ 1