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

WRIT PETITION Nos.383, 392, 398, 400, 407, 411, 416, 419, 425, 431, 460 & 465 of 2015

COMMON ORDER : (Per Justice R. Subhash Reddy)

As the petitioner in all these writ petitions is same and as common questions arise for consideration on similar set of facts, all of them are heard together and are disposed of by this common order. For the purpose of disposal, we refer to the fact situation and parties as referred to in W.P.No.392 of 2015.

2. The petitioner has questioned the order passed by the revisional authority i.e. respondent No.1, dated 14.11.2014, passed in RV No.LV(4)/29/2013, in exercise of powers under Section 9-C of the A.P. Entertainments Tax Act, 1939.

3. The petitioner is a Master Cable Operator and provides signals to subscribers through other cable operators. Petitioner has filed monthly returns in Form-VI(A) for different tax periods. It is the case of petitioner that basing on the information furnished by the cable operators, he arrived at the number of connections and accordingly paid the entertainment tax.

4. The Commercial Tax Officer, Brodipet Circle, Guntur has initiated proceedings for assessing the tax alleging that the petitioner has not furnished correct information

with regard to number of connections for different tax periods and initiated fresh proceedings to assess the petitioner to the best of judgment in terms of powers vested under Rule 17 of the A.P. Entertainments Tax Rules, 1939. On receipt of show cause notice dated 24.04.2009, the petitioner has filed a detailed explanation on 22.06.2009. In the explanation filed, while denying the various allegations made by the Commercial Tax Officer, the petitioner has specifically pleaded for supply of material/report of the Vigilance and Enforcement Department and also requested for an opportunity of being heard before passing further orders. Referring to said explanation filed by the petitioner, final orders are passed by the Entertainment Tax Officer on 08.10.2010, vide reference ETIN : 28883997926. In the final orders passed, it is alleged that the petitioner has reported less number of connections when compared with the connectivity payment made to the pay channels of Gemini, resulting in evasion of Entertainment Tax to the Government every month. With reference to the explanation filed by the petitioner, it is merely stated that the objections filed by the petitioner are not acceptable and accordingly confirmed the proposed tax as indicated in the show cause notice.

5. As against the orders of the Entertainment Tax Officer, the petitioner has availed the remedy of appeal as provided under the Entertainments Tax Act, before the

Appellate Deputy Commissioner (CT), Guntur, who has passed the common order dated 20.12.2010, in all the matters. In the final orders, the Appellate Deputy Commissioner has specifically recorded a finding that the assessing authority had not conducted any ground survey work regarding the actual number of connections held with the petitioner herein and further recorded that the assessing authority has not furnished to the petitioner, the reports available with him. Reliance is also placed on the judgment of this Court in the case of **ITC Limited, Sarapaka, Khammam Dist. Vs. The Asst.Commissioner, Commercial Taxes, LTU Warangal**[1]. The ratio laid down in the said judgment is also extracted in the order of the Appellate Deputy Commissioner, as under :

> "Any assessment order passed without furnishing such reports amounts to denial of reasonable opportunity and such orders cannot be sustained in law".

Basing on the said judgment, the appellate authority has allowed the appeal by order dated 20.12.2010 and remanded the matter to the assessing authority with a direction to conduct ground survey work basing on the information stated to have been available with him and pass appropriate orders after affording reasonable opportunity to the appellant.

6. Although such order is passed by the Appellate Deputy Commissioner (CT), Guntur on 20.12.2010, the 1st

respondent-Additional Commissioner (CT) (Legal) has initiated *suo motu* revisional proceedings and passed impugned order dated 14.11.2014 in Proceedings RV No.LV(4)/29/2013, setting aside the orders of the Appellate Deputy Commissioner (CT), Guntur, dated 20.12.2010, and confirming the tax as proposed by the assessing authority. As against the same, these writ petitions are filed.

7. Mainly, it is the case of petitioner that under Section 9-C of the A.P. Entertainments Tax Act, 1939, the Entertainments Tax Commissioner or the Entertainments Tax Joint Commissioner alone are empowered to initiate *suo motu* proceedings revising the orders of the appellate authority but not any other authority. It is stated, thus, the order passed by the Additional Commissioner (CT) (Legal) in the absence of valid authority, is illegal and without jurisdiction. It is the further case of petitioner that as orders are passed by the assessing authority without furnishing the material relied on for passing such orders and as the objections raised by the petitioner to the show cause notice are also not considered by the assessing authority, there is no illegality or irregularity in the orders passed by the Appellate Deputy Commissioner so as to interfere with the said order in exercise of powers under Section 9-C of the Act. In support of his case, the petitioner has relied on the judgment of this Court in **NSL Krishnaveni Sugars Ltd, Mahabubnagar Vs.**

Government of Telangana & others[2].

8. Counter affidavit is filed on behalf of the 1st respondent-Additional Commissioner (CT) (Legal). In the counter affidavit, while denying the various allegations made by the petitioner, on the allegation of jurisdiction raised by the petitioner, it is stated that the Commissioner of Commercial Taxes issued office order dated 19.06.2014, passed in CCT's Ref.No.C/2/2014, allocating the subjects/functions among the various posts in the office of the Commissioner of Commercial Taxes. It is stated that the Additional Commissioner (CT) (Legal) was allocated the revisions and review work of the ADCs of all the Divisions. Referring to said orders of the Commissioner, it is stated by the 1st respondent that he is empowered to pass orders in exercise of powers under Section 9-C of the Act. Further, with reference to the merits of the claim of the petitioner, it is stated that the subscription agreements entered by the petitioner with various channel partners like Gemini Plus, Sun Distribution Services Private Limited, MAA Tv Etc. for distribution of their channels through their cable networks in the territory specified therein, show that the subscription fee is charged based on the number of connections and the rate per subscription will also be clearly specified in the said agreements, basing on which, invoices are raised by the said channel partners. The material obtained by

the Department from the channel partners shows that the petitioner has not disclosed the correct number of connections for payment of tax, as such, basing on such material, fresh assessment proceedings are initiated. On the aforesaid grounds, respondents sought to justify the orders passed by the revisional authority.

9. Heard learned counsel for the parties and also perused the material on record and relevant provisions under the A.P. Entertainments Tax Act, 1939.

10. A perusal of the provision under Section 9-C of the A.P. Entertainments Tax Act, 1939 shows that revisional powers are specifically conferred on the Entertainments Tax Commissioner or the Entertainments Tax Joint Commissioner to *suo motu* call for and examine the record of any order passed or proceedings recorded by any authority, officer or person subordinate to him under the provisions of the said Act for the purpose of satisfying himself as to the legality or propriety of such order or as to the regularity of such proceedings and may pass such order in reference thereto as he thinks fit. In this case, it is not in dispute that though the number of connections furnished by the petitioner to the assessing authority was found to be incorrect, the material relied on by such authority was not supplied to the petitioner along with the show cause notice. We have also perused the explanation filed by the petitioner in response to the show cause notice issued to him. In the explanation filed, while

denying the allegations made in the show cause, the petitioner has categorically pleaded for supply of material on the basis of which proceedings are initiated against him by disputing the number of connections furnished by him and he also requested for an opportunity of personal hearing before final orders are passed. A perusal of the order passed by the assessing authority shows that the objections raised by the petitioner in his explanation are not at all dealt with, and merely in one line order, the said objections are over-ruled stating that the same are not acceptable. It is also not in dispute that after explanation is filed, no material is supplied to the petitioner before passing the assessment order. The Appellate Deputy Commissioner has rightly placed reliance on the judgment of this Court in **ITC Limited**'s case (1 supra) and on the ground that such an action on the part of respondents is in violation of the said judgment of this Court, which amounts to denial of opportunity, has rightly set aside the order of the assessing authority and remanded the matter for fresh consideration. In view of the nature of the order passed by the Appellate Deputy Commissioner, it cannot be termed either as an illegal or irregular order. As the assessing authority has not furnished relevant material to the petitioner along with the show cause notice and also not considered the objections raised by the petitioner in his explanation to such show cause notice, the Appellate Deputy Commissioner has rightly set aside the order and remanded the matter for fresh consideration. In view of the specific provision under Section 9-C of the Act conferring the revisional powers only on Entertainments Tax Commissioner or the Entertainments Tax Joint Commissioner, we are of the view that the Additional Commissioner is not empowered to review the order passed by the Appellate Deputy Commissioner, in the absence of valid delegation. The judgment relied on by the learned counsel for petitioner in the case of **NSL Krishnaveni Sugars Ltd**. (2 supra) also supports the case of the petitioner. We have also perused the office order dated 19.06.2014, issued by the Commissioner of Commercial Taxes, allocating the subjects/functions among the various posts in the office of the Commissioner of Commercial Taxes, but the same would not give any authority for the 1st respondent-Additional Commissioner (CT) (Legal), to exercise powers under Section 9-C of the Act. Such allocation order issued by the Commissioner is only for the purpose of internal administration in the office of Commissioner, but basing on such orders of allocation, statutory powers conferred under Section 9-C of the Act cannot be by-passed. Therefore, we are convinced that the Additional Commissioner (CT) (Legal) is not competent to pass orders under Section 9-C of the Act, in the absence of any authority contemplated in the said Act. Even otherwise, in view of the findings recorded by the Appellate Deputy

Commissioner, it cannot be said that the said order is either irregular or illegal, so as to invoke *suo motu* powers for its revision, which itself is an open remand order to pass fresh orders in accordance with law.

11. For the aforesaid reasons, all these writ petitions are allowed and the impugned orders passed by the 1st respondent-Additional Commissioner (CT) (Legal), are set aside. Consequently, the order of the Appellate Deputy Commissioner stands revived. The assessing authority is directed to furnish to the petitioner, the material on the basis of which, proceedings are initiated against him, within a period of six weeks from the date of receipt of this order and give sufficient opportunity to file further objections, if any, and pass appropriate orders after giving opportunity of hearing, within a period of four months from today. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

R. SUBHASH REDDY, J

10th February 2015

ajr

DR.B.SIVA SANKARA RAO, J

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[1] 49 APSTJ 234

[2] (2014) 59 APSTJ 58