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

<u>TAX REVISION CASE Nos.16, 25, 35 & 127 of 2002 AND 112 of 2003</u>

<u>COMMON ORDER</u>: (*Per Hon'ble Sri Justice R. Subhash Reddy*)

All these Tax Revision Cases, under Section 22 (1) of the A.P. General Sales Tax Act, 1957 (APGST Act), are filed against the common order dated 09.10.2001 in T.A.Nos.1694, 1695, 1696, 1697, 1698 and 1699 of 2009, passed by the Sales Tax Appellate Tribunal, Andhra Pradesh, Hyderabad (for short 'the Tribunal').

<u>Since the parties in all these cases are same and common issue arises for consideration in all these matters, these revision cases are heard together and disposed of by this common order.</u>

In all these cases, the only question that arises for consideration is whether the consequential assessment orders passed by the assessing authority are barred by limitation or not, in view of the provision of Section 24-A of the APGST Act. After appreciating the evidence on record and by adverting to various authoritative pronouncements of the Apex Court and this Court, the Tribunal has held that the orders were not passed within the time and the entries were inserted in the relevant register subsequently after expiry of the period of limitation and, accordingly, set aside the orders of lower authorities. As against the same, these Tax Revision Cases are filed.

Originally, the assessment orders for the years 1983-84, 1985-86, 1986-87, 1987-88 and 1989-90 were passed by the Commercial Tax Officer, Vijayawada. Aggrieved thereby, the assessee-respondent filed appeals before the Appellate Deputy Commissioner, Vijayawada, who remanded the matters to the Commercial Tax Officer for denovo verification of the documents relating to items disputed in the appeals and to pass necessary consequential orders. For the assessment years 1983-84, 1985-86, 1986-87 and 1987-88, the assessing authority received the orders of the Appellate Deputy Commissioner on 29.12.1995, whereas for the assessment year 1989-90, he received the order on 06.02.1996. Thereafter, the consequential assessment orders were passed by the assessing authority on 08.12.1998, 04.01.1999, 21.12.1998, 18.12.1998, and 18.12.1998 respectively. Questioning the same, the assessee filed appeals before the Appellate Deputy Commissioner. The main plea of the assessee before the Appellate Deputy Commissioner was that the assessing authority, while giving effect to the orders of remand, has passed the consequential orders beyond the period of three years from the date of receipt of the remand order passed by the Appellate Deputy Commissioner and, as such, they are barred by limitation under Section 24-A of the APGST Act. However, the

Appellate Deputy Commissioner, while not accepting the said plea of the assessee, remanded the matters to the assessing authority once again. Challenging the same, the assessee carried the matters by way of appeals before the Tribunal. Before the Tribunal, the assessee has mainly placed reliance on the judgment of the Hon'ble Supreme Court in the case of **State of Andhra Pradesh vs. Ramakistaiah & Company**[1] and also the judgement of this Court in the case of **State of Andhra Pradesh vs. Toshiba Anand Batteries Limited**[2]**.** By placing reliance on these judgments and having verified the relevant registers i.e., diaries of the C.T.O, 'L' and 'M' registers, despatch register of the C.T.O and the diary for the F.N ending 15.12.1998, which is maintained as per the manual, the Tribunal held that the orders were not passed within time and the entries were inserted in the register later, so as to show that such orders were passed within the period of limitation.

In these Revision Cases, it is the case of the petitioner that the Tribunal is not justified in setting aside the orders of the lower authorities. It is submitted that as per the revised assessment orders passed by the assessing authority, it is clear that several notices were issued to the assessee to appear with books of accounts and documentary evidence in order to examine the case in the light of the remand direction issued by the Appellate Deputy Commissioner and, having received the notices, the assessee did not produce the books of accounts and documentary evidence in support of his claim and, therefore, the Commercial Tax Officer construed that the assessee had no interest and intention to produce the required information and accordingly passed the orders.

Heard learned counsel for the parties.

When the matters are called for hearing, it is submitted by learned
counsel for the respondent-assessee that the Tribunal has gone into the relevant registers and recorded the findings by examining whether the orders passed by the assessing authority are within the period of limitation as per Section 24-A of APGST Act. It is further submitted that as per the provisions of APGST Act and in view of the factual findings recorded by the Tribunal, there is no question of law that arises for consideration so as to interfere with the impugned orders. On hearing the learned counsel, we have perused the impugned orders passed by the Tribunal.

I n **Ramakistaiah**'s case (1 supra), the Hon'ble Supreme Court has held that if there is delay in serving the orders, in the absence of any explanation for the delay, it must be presumed that the orders are not made on the date purported to have been made. In this case, it is not in dispute that the orders of the assessing authority were not served within the period of limitation and they are served with the delay ranging from four months 19 days to four months 29 days. In view of this admitted position, the judgment of the Hon'ble Supreme Court in **Ramakistaiah**'s case (1 supra) supports the case of the respondent-assessee. Further, in **Toshiba**'s case (2 supra), this Court has held that the period of limitation covers the whole proceedings of the revision including passing of the final orders and communicating the same promptly to the parties concerned and, thus, it was made clear that mere initiation of proceedings is not sufficient and the order should be passed and served within that time. It was also held that due to delayed service of order, the onus is on the Revenue to prove otherwise. Further, in the case of **Murugan Cold Storage (P) Ltd, Chittoor** vs. **Commercial Tax Officer, Chittoor & others**[3]**,** this Court has reiterated the same legal position with reference to limitation under Section 24-A of the APGST Act.

In view of the above said authoritative pronouncements and having regard to the factual findings recorded by the Tribunal, after verifying the relevant registers, we are of the view that the orders are not passed within the period of limitation, as observed by the Tribunal, and admittedly they are served after the period of limitation and, in the absence of any valid explanation for that, we are of the considered view that the Tribunal has rightly set aside the orders passed by the lower authorities. Further, we are also of the view that there is no question of law that arises for consideration in these cases warranting interference of this Court under Section 22 (1) of the APGST Act.

For the aforesaid reasons, these revision cases are devoid of merits and the same are accordingly dismissed. No order as to costs.

As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE R. SUBHASH REDDY

Dr. JUSTICE B.SIVA SANKARA RAO

16.02.2015
v v

[1] (1994) 93 STC 406

[2] 20 APSTJ 63

[3] 56 APSTJ 61 (APHC)