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

WRIT PETITION No.38560 OF 2014

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

This Writ Petition is filed questioning the order, dated 15.03.2014, passed in R.R.No.69/2013 by the Deputy Commissioner (Commercial Taxes), Abids Division, Hyderabad.

Petitioner - Andhra Pradesh Beverages Corporation Limited is a fully owned undertaking of the Government of Andhra Pradesh and it was established with the main objective of supplying hygienic packed arrack to the licensees. It is stated that earlier, the petitioner was on the rolls of the 1st respondent-Commercial Tax Officer, Agapura Circle, Hyderabad and is at present on the rolls of Commercial Tax Officer, Eluru. It is stated that the 1st respondent, vide assessment order dated 11.03.2008 for 2005-06, determined the gross turnover of Rs.5367,91,60,225/- and after allowing exemption on a turnover of Rs.2354,10,50,449/-, determined the net taxable turnover as Rs.3013,81,09,776/- and levied tax of Rs.2109,66,76,843/- and after giving credit of Rs.2039,95,04,000/- already paid by the petitioner, arrived at the balance tax payable by the petitioner as Rs.69,71,72,843/-. On the ground that there was arithmetical error in the earlier proceedings, the impugned order, demanding an amount of Rs.87,58,355/-, was passed by the Deputy Commissioner (CT), Abids Division, referring to Rule 60 of the Andhra Pradesh Value Added Tax Rules, 2005 (for short, 'the Rules'). The impugned order is questioned on the ground that as there was arithmetical error apparent on the face of record in the earlier proceedings, under Rule 59 (1) (6) (b) of the Rules, the authority empowered to correct such error is only the assessing authority, but not the Deputy Commissioner (CT), and if the Deputy Commissioner (CT) is allowed to correct such errors, the same would amount to second revision, which is not permissible under law.

Having heard learned counsel for the parties, we have perused Rules 59 and 60 of the Rules. Rule 59 (1) (6) of the Rules reads as under:

> "**59. Authority prescribed**. – (1) For the purpose of exercising powers specified in column (2) of the table below, the authorities specified in column (3) thereof, shall be the authorities prescribed:

TABLE

Authority prescribed under the Act and Rules

S. No.	Powers	Authority	Section/Rule
1	2	3	4
..	…	…	…
6.	Reassessment a) in case of underassessment	The authority who detects the underassessment but not below the rank of the assessing authority, who made the assessment	Section 21 (6) and Rule 60

	b) in case of errors apparent on record	The authority who made the assessment	

Further, Rule 60 of the Rules reads as under:

> "**60. Correction of Errors**. – Any authority prescribed, appellate or revising authority may at any time within four years from the date of any order passed by him rectify any clerical or arithmetical mistake apparent from the record. No such rectification which has the effect of enhancing the tax liability or penalty shall be made unless a notice is given to the person concerned to provide him with a reasonable opportunity of being heard."

From a perusal of the provision under Rule 59 (1) (6) (b) of the Rules, it is clear that if there is any error apparent on the face of the record, the authority empowered to correct the same is only the assessing authority, but not the Deputy Commissioner (CT). Hence, if the impugned order is allowed to stand, it would amount to second revision against the order of the assessing authority.

In that view of the matter and from the Rule position as it is clear that the Deputy Commissioner (CT) has no authority to pass orders under the guise of arithmetical or clerical errors, we are of the view that the impugned order is liable to be set aside.

Accordingly, the Writ Petition is allowed and the order, dated 15.03.2014, passed in R.R.No.69/2013 is set aside. It is made clear that this order will not preclude the competent authority from passing orders pursuant to the

Memo, dated 13.06.2011, issued by the Government.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. No costs.

R.SUBHASH REDDY, J

Dr. B. SIVA SANKARA RAO, J

February 06, 2015

MD/ajr