THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

Writ Petition No.23041 of 2007

ORDER: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

The proceedings under challenge in this writ petition is the assessment order dated 28.12.2002 and the revised assessment proceedings dated 29.12.2006.

The only ground, on which the assessment order, passed five years before the writ petition, was filed is questioned is that a copy of the assessment order was not served on the petitioner; and the conditions stipulated in Rule 58 of the Andhra Pradesh General Sales Tax Rules, 1957 (for short "the APGST Rules") have not been complied with. The petitioner has, admittedly, closed his business in August, 2000 itself. Rule 53(a) of the APGST Rules stipulates that, if any dealer discontinues the whole or any part of the business carried on by him, he shall inform the fact to the assessing authority concerned within 30 days thereafter. The petitioner has, admittedly, not intimated the respondent-assessing authority of the fact that they had discontinued their business, nor did they intimate the assessing authority of the address to which notices or summons should be sent. In the counter affidavit, the respondent states that the notice was served by affixture on the premises where the petitioner had hitherto carried on business as a dealer.

While Sri S.Krishna Murthy, learned counsel for the petitioner, would contend that Rule 58 of the APGST Rules has not been complied with, it is necessary to note that Rule 58(d) of the APGST Rules stipulates that, if any or all of the modes i.e (a) to (c) is not practicable, then the notice can be served by affixture on some conspicuous place at his last known place of business or residence. Clause (a) of Rule 58 could not have been complied with as the petitioner has, admittedly, not informed the respondent-assessing authority of his address to enable them to effect service. Clause (b) requires the assessing authority to serve notice at his last known place of business or residence and, as the business premises was closed, the respondent cannot be faulted in this regard. Clause (c) requires notice to be sent by registered post and, if it is returned unserved, for it to be put on the notice board of the office of the assessing authority or in the Chamber of Commerce. No useful purpose would have been served in sending the notice by registered post to the petitioner's last known place of business, as they had closed their business in August, 2000 itself. We cannot, therefore, fault the assessing authority in effecting service of notice by affixture, more so when the petitioner had not complied with the requirements of Rule 53 (a) of the APGST Rules of intimating the assessing authority regarding closure of their business, or the address to which the notice should have been sent.

As we are unable to accept the submission of Sri S.Krishna Murthy, that the assessment order was served on them belatedly on 24.08.2007, and as it is evident that the notice was served by affixture on 20.01.2003 itself, the challenge to the assessment order must fail on the ground of inordinate and unexplained delay and laches.

The order of the revisional authority is questioned on the ground of non-application of mind, and as an order based merely on the objections of the Audit Officer. Reliance is placed by Sri S.Krishna Murhty on ***Indian Railway Constructions International Limited vs. Commercial Tax Officer***[1]. A bare perusal of the revision order shows that, while the error had been brought to the notice of the authorities concerned by the Audit Officer, the Commercial Tax Officer had, by proceedings of December 2006, also observed that iron and steel scrap was taxable at the point of purchase by the last dealer who buys it in the state upto 14.11.2000, and therefore the petitioner was liable to tax on the purchase of scrap at the prescribed rate, as they were manufacturers of iron rods. We are satisfied that the order was not based merely on the

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objections raised by the audit officer, and that the respondent had applied his mind and, independently, arrived at the conclusion that a certain part of the turnover, representing scrap, was liable to be subjected to tax.

The last submission of Sri S.Krishna Murthy is that the assessing authority had levied interest at a flat rate of 36% per annum. Section 16(3) of the Andhra Pradesh General Sales Tax Act, 1957, prior to its amendment by Act 2 of 2005 with effect from 12.01.2005, stipulated payment of interest at 18% for 30 days of delay; at 24% from 30 days to 90 days; at 30% for above 90 days but below 365 days; and at 36% for the delay exceeding one year. From 12.01.2005, Act 2 of 2005 stipulates payment of 1% interest per month. The assessing authority has, therefore, erred in levying interest at a flat rate of 36%.

While we see no reason to interfere with the assessment order, the impugned order, to the extent interest was levied at a flat rate of 36% per annum, is set aside. The assessing authority shall re-compute the interest component of the demand notice in terms of Section 16(3) of the Andhra Pradesh General Sales Tax Act, as noted hereinabove, and recover the tax due, and the interest payable thereon, in accordance with law.

Subject to the aforesaid observations, the Writ Petition fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(A.SHANKAR NARAYANA, J)

23rd December, 2016
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THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

<u>Writ Petition No.23041 of 2007</u>

<u>Date: 23.12.2016</u>

JSU