THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
And
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TREVC.No.6 of 2016

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

This revision, under Section 22(1) of the Andhra Pradesh General Sales Tax Act, 1957 (for short "the Act"), is preferred against the order passed by the Sales Tax Appellate Tribunal, Visakhapatnam in T.A.No.1118 of 2004 dated 27.01.2014. The petitioner invoked the jurisdiction of the Tribunal against the order passed by the Appellate Deputy Commissioner dated 31.08.2001 whereby the assessment order passed by the Commercial Tax Officer was confirmed.

The petitioner, a registered dealer on the rolls of the Commercial Tax Officer, Naidupet Circle, is a dealer in diesel, superior kerosene, lubricants oils, grease etc. An assessment order was passed imposing tax on kerosene oil, additional tax, surcharge and turnover tax. The assessment order attained finality as the petitioner did not prefer an appeal thereagainst. The petitioner, thereafter, filed an application under Rule 50 of the Andhra Pradesh General Sales Tax Rules (for short "the Rules') to rectify the order of assessment wherein levy of tax on kerosene and levy of additional tax, surcharge and turnover tax was under challenge. Without considering the said application, the assessing authority issued a notice to the petitioner asking him to show cause why coercive steps should not be taken against them for not paying the tax imposed.

Aggrieved by the show cause notice, the petitioner preferred an appeal to the Appellate Deputy Commissioner who rejected the appeal at the stage of admission. Aggrieved thereby, the petitioner invoked the jurisdiction of the Sales Tax Appellate Tribunal which, by its order dated 19.05.2000, allowed the appeal on the ground that, since a show cause notice was issued, the petitioner should have been given an opportunity of being heard; and failure to provide the petitioner an opportunity of hearing had caused injustice to them. The appeal was remanded to the Appellate Deputy Commissioner with a direction to register the appeal and dispose it of in accordance with law.

The appeal was, thereafter, registered by the Appellate Deputy Commissioner and notices were issued calling upon the petitioner to appear and pay the admitted tax. The petitioner, however, chose not to appear before the Appellate Deputy Commissioner, and did not pay the admitted tax even after receipt of the said notice. The appeal was dismissed by the Appellate Deputy Commissioner based on the material on record, and on the ground that the petitioner ought to have preferred an appeal against the assessment order. The Appellate Deputy Commissioner held that, as the assessment order had become final, it could not be questioned under Rule 50 of the Rules. Aggrieved thereby, the petitioner carried the matter in appeal before the Tribunal.

In the order under revision the Tribunal, after referring to Rule 50 of the Rules, held that the said Rule was meant to rectify clerical or arithmetical mistakes which were apparent from the record; the Rule did not permit re-opening of an assessment or to question the assessment on any grounds by the dealer; since the petitioner failed to prefer an appeal against the assessment order, it was not open to them to question the said assessment order by way of a petition under Rule 50 of the Rules; even after the matter was remanded, the petitioner did not appear before the Appellate Deputy Commissioner despite receipt of the notice; they did not also pay the admitted tax; it could not therefore be said that there was violation of principles of natural justice; the Appellate Deputy Commissioner had rightly disposed of the appeal based on the material on record; as the Appellate Deputy Commissioner had dealt with the contentions raised in the appeal, and the petitioner did not file a regular appeal against the assessment order, no useful purpose would be served in remanding the appeal to the Appellate Deputy Commissioner; and the petitioner could not question the final assessment order before the Appellate Deputy Commissioner under Rule 50 of the Rules.

As has been rightly pointed out by the Tribunal, the power conferred on the assessing authority under Rule 50 of the Rules is only to rectify any clerical or arithmetical mistakes which are apparent from the record. The said Rule does not confer on him any power to review his earlier order. Even otherwise for an appeal to be entertained against the assessment order, the petitioner was required to pay the admitted tax which they failed to pay. The Tribunal has rightly rejected the appeal on both the grounds. No substantial question of law arises for consideration necessitating the present revision, preferred thereagainst, being entertained.

The revision fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

07th June, 2016.
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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
And
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Date: 07.06.2016

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