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

WRIT PETITION NO.19995 of 2016

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

Heard Sri V. Bhaskar Reddy, learned counsel for the petitioner and Sri J. Anil Kumar, learned Special Standing Counsel for Commercial Taxes and, with their consent, the writ petition is disposed of at the stage of admission.

The proceeding under challenge in this writ petition is the rectification order passed by the Assistant Commercial (CT), Punjagutta Division, Hyderabad dated 29.01.2016, under Rule 60 of the APVAT Rules 2005, as being arbitrary and illegal.

In the order, under challenge in this writ petition, the Assistant Commissioner held that a reference was made in the notice to Section 21(6) of the APVAT Act 2005 inadvertently; what was proposed in the notice was to pass a rectification order under Rule 60 of the APVAT Rules to correct the arithmetical errors contained in the original assessment orders with regards transfer of the TDS amounts to the sub-contractor, and not revision of assessment; the dealer had claimed that, in respect of the TDS certificates in Form 501A issued by the Executive Engineer, R&B Bodhan, the amounts mentioned in the figures was wrongly shown as Rs.1,00,078/-, the same was correctly mentioned in words as Rs.10,00,478/-, and as such there was no excess credit; the said Form 501A did not contain any remittance particulars of the amount into the treasury; the dealer had also failed to substantiate such a claim by obtaining and furnishing a rectified Form VAT 501A; since the dealer had transferred an excess amount of tax credit to the sub contractor, other than the original amounts actually deducted at source by the Contractee Government; the sub- contractor dealer was claiming higher amount of tax credit than the actual amount of tax deducted at source and remitted to the treasury; and since the amount of TDS, transferred by the dealer to the sub-contractor, cannot be reversed at this stage, even if such excess transfer is not an under declaration of tax, they are liable to pay the same to the Government.

In terms of the order passed under Rule 60 of the APVAT Rules, the tax payable by the petitioner was determined as Rs.13,52,686/- whereas, in terms of the earlier assessment order dated 20.07.2012, the petitioner was found to have excess credit of Rs.3,73,179/- for the year 2009-2010; and an excess credit for the year 2010-2011 of Rs.2,08,194/-. Rule 60 of the AP VAT Rules confers power on the prescribed authority, appellate or revising authority, at any time within four years, to rectify any clerical or arithmetical mistake apparent from the record. The said rule stipulates that 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 the facts noted herein above, it is evident that what was sought to be corrected was not an arithmetical or clerical mistake in the assessment order, more so, one which is apparent from the record. In view of the law declared by the Division Bench of this Court, in **Arora Enterprises vs. The Deputy Commissioner of Commercial Taxes, Abids Division**[1], Rule 60 is only attracted when a clerical or arithmetical mistake is apparent from the record. The said Rule does not enable an assessment order to be revised or reviewed, but provides only for a clerical and arithmetical error, apparent from the record, to be corrected. The Assistant Commissioner has exceeded his jurisdiction as, under the guise of exercising jurisdiction, under Rule 60 of the AP VAT Rules, he has sought to review the assessment order passed by him earlier, though neither the Act nor the Rules confer on him any such power of review.

While we were initially inclined to admit the writ petition and grant stay, Sri J. Anil Kumar, learned Special Standing Counsel for Commercial Taxes, on instructions, would fairly state that it would suffice if this Court were to leave it open to the authorities to revise the assessment order. In view of the submissions now made by the learned Special Standing Counsel, the impugned order, passed by the Assistant Commissioner in the exercise of the powers conferred by Rule 60 of the VAT Rules, is set-aside. It is made clear that this order does not preclude the authorities concerned from exercising their powers of revision under the Act, if they so choose, in accordance with law.

The Writ petition stands disposed of. Consequently, miscellaneous applications pending if any shall also stand closed. No costs.

JUSTICE RAMESH RANGANATHAN

JUSTICE M. SATYANARAYANA MURTHY

23.06.2016

Note: cc by 27.06.2016
B/o
sp

---

[1] (2011) 37 VST 113 AP