THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Writ Petition No.22203 of 2008

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

The jurisdiction of this Court, under Article 226 of the Constitution of India, is invoked by the petitioner, a dealer carrying on business in pipes, pipe fittings and hardware, aggrieved by the order passed by the Appellate Deputy Commissioner(CT), Hyderabad dated 20.8.2008.

Pursuant to the show cause notice dated 21.2.2006, calling for written objections from the petitioner, the assessing authority passed the assessment order on 26.2.2008 rejecting their claim for exemption on a turnover of Rs. 1,02,66,738/- relating to the second sale of paints and G.I. fittings on the ground that the petitioner had failed to file local purchase details from registered dealers. The petitioner's claim of exemption was disallowed, and a higher rate of tax was proposed.

Aggrieved by the assessment order, the petitioner carried the matter in appeal to the Appellate Deputy Commissioner; and, instead of producing the purchase invoices, they filed a statement containing details of purchases in support of their claim that they had purchased the subject goods from registered dealers within the State. The Appellate Deputy Commissioner, however, rejected the appeal on the ground that the authorized representative had not produced at least a few original purchase invoices on a sample basis for his primary verification regarding the correctness of the purchase details filed before him; and, in the absence of atleast a few purchase invoices to prove that the disputed turnover related to second sales only, the appeal was liable to be dismissed.

Sri Tejprakash Toshniwal, learned counsel for the petitioner, would question the order of the Appellate Deputy Commissioner on grounds that the statement containing details of purchases was sufficient for the assessee to claim exemption; the Appellate Deputy Commissioner ought to have remanded the matter to the assessing authority for verification whether or not the purchase details contained in the statement were supported by proper documentation; the Appellate Deputy Commissioner's order travels beyond the show cause notice issued by the assessing authority; remanding the matter to the assessing authority would also have protected the interests of revenue, as the petitioner's failure to satisfy the assessing authority that they were entitled for exemption by producing sufficient details, would have attracted the penal consequences stipulated under Section 7-A(2) of the Andhra Pradesh General Sales Tax Act, 1957 (for short 'the Act'); and the Appellate Deputy Commissioner erred in not remanding the matter to the Assessing Authority for verification of the petitioner's claim for exemption based on purchase invoices, which he would have submitted if only an opportunity had been provided to him. Learned counsel would place reliance on **Bandamidi Rajaiah vs. Board of Revenue, Commercial Taxes & Others[1], State of Andhra Pradesh vs. Loharu Steel Industries Ltd., & Others[2] and Tata Engineering and Locomative Company Ltd. vs. Director (Research) MRTP Commission and others[3]** in this regard.

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[1] [1978] 42 STC 145 (AP)
[2] [1995] 96 STC 369 (AP)
[3] (2015) 10 SCC 734

What was exempted from tax under the APGST Act was the second sale of paints and G.I. fittings. The second sale of these goods pre-supposes that the first sale, within the State, has been subjected to tax under the Act. It is only if the petitioner had purchased these goods from registered dealers within the State, and if such transactions had been subjected to tax under the Act, would the petitioner have been entitled for exemption from tax on the second sale of those goods. As the petitioner failed to produce the purchase invoices to show that they had purchased the subject goods only from registered dealers within the State, the assessing authority cannot be said to have erred in rejecting the petitioner's claim of exemption.

In support of his contention that the order passed by the Appellate Deputy Commissioner travels beyond the show cause notice, Sri Tejprakash Toshniwal, Learend Counsel, would draw our attention to the assessment order dated 26.2.2008 wherein a reference was made to the show cause notice, issued and served on the dealer on 21.2.2006, calling for his written objections to the proposed turnover.

In **Loharu Steel Industries Ltd.,**[2] a Division Bench of this Court held that it is impermissible for a revisional order to be passed on grounds not mentioned earlier in the show cause notice. In **Tata Engineering and Locomotive Company Ltd.,**[3] the Supreme Court held that the Commission could not have travelled beyond the specific allegations in the notice of enquiry because such a course would violate rules of fairness and natural justice.

The contents of the show cause notice are not detailed in the assessment order dated 26.2.2008. When we asked Sri Tejprakash

Toshniwal regarding the contents of the said show cause notice, learned counsel would draw our attention to the averments in the writ affidavit to contend that the petitioner did not receive the show cause notice at all. In paragraph-3 of the writ affidavit, all that is stated is that the petitioner could not submit the purchase details made from local registered dealers, as the show cause notice issued by the 1st respondent could not be served on the proper person; and, as such, the petitioner was not aware, and could not give a reply, which resulted in the impugned ex-parte order being passed. The petitioner does not deny receipt of the show cause notice, and merely contends that it was not served on the proper person. The writ affidavit is silent on whom the show cause notice was served and why, according to the petitioner, such a person was not the proper person on whom the show cause notice should have been served. We see no reason, therefore, to accept the contention that the show cause notice was not received by the petitioner.

As noted hereinabove, the question whether the order of the Appellate Deputy Commissioner travelled beyond the show cause notice could have been examined only if a copy of the show cause notice had been placed before us. In the absence of such information being placed on record, we are not in a position to determine whether or not the order, passed by the Appellate Deputy Commissioner, travelled beyond the show cause notice issued by the assessing authority.

In **Bandamidi Rajaiah**[1], a Division Bench of this Court observed that the burden lies on the assessee under Section 7-A of the A.P.G.S.T. Act to show that the goods in question had suffered tax at the point of first purchase; the assessee had furnished details regarding the dates of purchase, the names of the parties, their addresses, the bill numbers, quantity and the amount involved; the assessing officer did not, however, make any further enquiry or verification, but had negatived the claim put forth by the assessee; and once the assessee furnished the necessary information to show that the goods had suffered tax, it was for the assessing authority to verify the correctness of the information furnished by the assessee.

The assessing authority has, no doubt, held that the assessee did not file local purchase details. These words cannot be construed as merely requiring the petitioner to file a statement of such purchases, without producing the relevant purchase invoices. As has been observed by the Appellate Deputy Commissioner, it is only if at least a few of the purchase invoices were produced, would it have been possible for him to decide whether or not the petitioner had purchased the goods from registered dealers within the State for, in such a case alone, would they be entitled for exemption on the second sale of such goods.

Section 7-A(1) of the A.P.G.S.T. Act stipulates that, in case of an assessment made under Section 5(2) or Section 6, the burden of proving that any sale or purchase effected by a dealer is not liable to any tax or is liable to be taxed at a reduced rate shall lie on the dealer. It is no doubt true that under Section 7-A(2), where a dealer issues or produces a false bill, voucher, declaration, certificate or other document with a view to support or make any claim that a transaction of sale or purchase effected by him is not liable to be taxed, the assessing authority shall, on detecting such issue, impose penalty which may extend to three times the tax due.

While the assessing authority, undoubtedly, has the power to impose penalty when a dealer has produced a false bill or voucher, that does not absolve the dealer of his onus to establish his claim for exemption by producing the relevant documents, i.e the relevant purchase invoices, as Section 7-A(1) placed the onus on the dealer to prove that the goods purchased by him were from a registered dealer within the State. It is only then was the assessee entitled to claim exemption on the second sale of such goods within the State. The petitioner has failed to discharge this onus.

While Sri Tejprakash Toshniwal, Learned Counsel, would submit that the petitioner had submitted a few vouchers for verification of the Appellate Deputy Commissioner after he had passed the impugned order, and his request for re-verification was not acceded to, the petitioner's remedy in such a case was to approach the Sales Tax Appellate Tribunal and not the Appellate Deputy Commissioner who, after passing the impugned order, lacked jurisdiction to examine any documents which the dealer sought to place before him.

We are satisfied that mere furnishing a statement of purchase details did not suffice, and the Appellate Deputy Commissioner has not erred in holding that at least a few sample invoices ought to have been produced before him for verification as to whether or not the petitioner's claim for exemption was justified, and whether the goods sold by them were earlier subjected to tax at the point of first sale within the State. We see no reason, therefore, to interfere with the order impugned in this writ petition.

The writ petition fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(A. SHANKAR NARAYANA, J)

15th November, 2016
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Date: 15.11.2016

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