THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

WRIT PETITION No.6682 of 2004

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

The proceedings, under challenge in this writ petition, are the orders passed by the Deputy Commissioner (CT), Guntur for the year 1999-2000 on 10.03.2004 and 18.03.2004, for the year 2000-01 on 10.03.2004, and for the year 1998-99 on 11.03.2004, which the petitioner claims are illegal, without authority of law, without jurisdiction and in violation of principles of natural justice.

The petitioner was assessed to tax both under the APGST and CST Acts for the years 1998-99 to 2000-01. The Deputy Commissioner (CT) sought to revise the order of the assessing authority, and issued a notice to the petitioner calling upon them to show cause why the orders passed by the assessing authority should not be revised. In the show cause notice dated 17.11.2003, issued to the petitioner for the year 2000-01 under the APGST and CST Acts, the Deputy Commissioner (CT) observed that the Commercial Tax Officer had allowed tax holiday on the entire first sale turnover of polished granite without deducting the value of base production; and he had allowed exemption on the sale of granite stone which was sold by the petitioner to polishing units.

In the show cause notice dated 19.01.2004, issued for the year 2000-01 under the CST Act, the Deputy Commissioner (CT) notes that the petitioner was granted tax holiday vide eligibility certificate dated 16.05.1996 for a period of five years from 22.09.1995 to 21.09.2000; while the said certificate was in force, another certificate for tax holiday for Rs.26,33,040/- was issued on 19.06.2000 for the period from 02.08.1998 to 01.08.2005 with a condition of availing incentives on the production achieved over and above the base production of 81,555.36

sq. ft; the Commercial Tax Officer had allowed tax holiday on the entire inter-state sales turnover of polished granite without deducting the value of base production; the order passed by the Commercial Tax Officer was irregular; and hence it was proposed to revise the assessment. The petitioner was asked to file their written objections to the show cause notice within ten days.

In the show cause notice dated 28.01.2004, issued for the year 1998-99 under the APGST Act, the Deputy Commissioner (CT) observed that the final eligibility certificate dated 16.05.1996 for Rs.34,37,860/-, for the five year period from 22.07.1995 to 21.09.2000, was for production of granite stone panels only; from the assessment file, it was noticed that the Commercial Tax officer, had allowed tax holiday on the sale of rough granite stones on a turnover of Rs.41,84,495/-, which was not eligible for tax holiday as per the final eligibility certificate; and it was, therefore, necessary to revise the assessment order and disallow tax holiday on the sale of rough granite stones of Rs.41,84,498/-. The petitioner was asked to file their written objections, against the proposed revision, within 10 days from the date of receipt of the notice.

While the show cause notices for the year 2000-01, both under the APGST and CST Acts dated 17.11.2003, were received by the petitioner on 16.12.2003, the petitioner appears to have filed a letter on 30.12.2003 requesting one month's time to file their objections thereto. In the meanwhile, show cause notices dated 19.01.2004 and 28.01.2004 were issued, copies of which the petitioner claims to have received on 07.02.2004 and to have requested, vide letter dated 13.02.2004, one month's time for filing their objections. Curiously, the petitioner has not filed copies of the letters, which they claim to have sent to the Commercial Tax Officer on 30.12.2013 and 13.02.2004, along with the Writ Petition. Be that as it may, the Deputy Commissioner issued a telegram to the petitioner informing them that time was being granted till 29.02.2004 to submit their reply. The petitioner claims to have submitted another letter dated 27.02.2004 seeking time of one month to submit their reply i.e., till 27.03.2004. However a copy of even this letter has not been filed along with the Writ Petition.

It is evident, from the afore-narrated events, that the petitioner had sought repeated adjournments without even stating why they needed further time. Even in the affidavit filed in support of the Writ Petition, no explanation is forthcoming for the petitioner having sought repeated adjournments. While the 15 days period, stipulated in the 1st show cause notice dated 17.11.2003, expired on 01.01.2004 (15 days from the date of receipt of the notice on 16.12.2003), the subsequent period of ten days stipulated in the notices dated 19.01.2004 and 28.01.2004 expired by 17.02.2004 (10 days from the date of receipt of these notices on 07.02.2004). In reply to their bald letter dated 13.02.2004, seeking one month time to file their objections, the Deputy Commissioner (CT) informed them by telegram that they should file their objections by 29.02.2004. Just before the time stipulated in the telegram was to expire, the petitioner again sought one month time, by their letter dated 27.02.2004, to file their objections.

Their first request, for grant of time of one month to file objections, was made vide letter dated 30.12.2003, the 2nd by their letter dated 13.02.2004, and the 3rd by their letter dated 27.02.2004. As the assessment orders were passed on 10.03.2004, it is evident that the revisional authority i.e., the Deputy Commissioner (CT) had granted the petitioner almost the entire time sought for by them in their letters dated 30.12.2003 and 13.02.2004. While a genuine request for grant of time may have necessitated consideration by the Deputy Commissioner (CT), it is relevant to note that, even in the affidavit now filed before us, no explanation is forthcoming for the petitioner having sought one adjournment after another to file their objections.

Sri M.V.J.K. Kumar, learned counsel for the petitioner, would draw attention of this Court to the impugned order passed by the Deputy Commissioner (CT) dated 10.03.2004, for the year 2000-01 under APGST & CST Acts, wherein he had referred to the petitioner having filed objections on 13.02.2004. While a copy of the said objection letter dated 13.02.2004 has not been filed along with the Writ Petition, even from what is noted in the assessment order it does appear that the petitioner had merely sought time to enable them to approach the Industries Department for clarification regarding levy of tax on the sale of rough granite stones, and had contended that they had sold rough Granite to registered dealers in the State and hence they were not last sellers of Granite Stones in the State. The observation of the Deputy Commissioner (CT) in the show cause notice issued by him that the tax holiday, which the petitioner was entitled to be granted, was only for production of granite slab panels and not for the rough granite slabs has not even been disputed by the petitioner.

In the impugned order, the revisional authority has observed that the petitioner was granted tax holiday only for granite stone panels and not for rough granite stones and, consequently, the assessing authority had erred in granting them tax holiday even on the sale of rough granite stones on a turnover of Rs.41,84,498/-. As the tax holiday granted to the petitioner, in terms of the first eligibility certificate dated 06.05.1996, is for production of granite stone panels, and not for sale of rough granite stones, the petitioner could not have been granted tax holiday by the assessing authority on the turnover representing the sale of rough granite slabs by the petitioner to polishing units.

The affidavit, filed in support of the writ petition, makes no reference to the finding recorded by the revisional authority that the petitioner had availed tax holiday even on rough granite slabs sold by them to polishing units. The petitioner does not dispute the fact that they were granted tax holiday only for production of granite stone panels and not for sale of rough granite stones. The finding of the revisional authority, that the assessing authority had granted the petitioner tax holiday even for production, below the base production, has also not been subjected to challenge in the Writ Petition. Even with respect to the assessment year 2000-01, since a part of the period i.e, after 21.09.2001 was beyond the period covered by the first eligibility certificate dated 06.05.1996, the petitioner could only have availed tax holiday for the period after 21.09.2001, if they had achieved the base production which is said to have been stipulated in the 2^{nd} eligibility certificate. As a copy of the 2^{nd} eligibility certificate has not even been filed along with the writ petition, we are unaware of its contents.

What is disconcerting is that under the guise of challenging the revisional order for violation of principles of natural justice, on the plea that they were not granted one month's time to file their objections, the petitioner has had the benefit of an interim order of stay, of the impugned order passed by the revisional authority, for the past 12 years from the year 2004 till date. The petitioner's claim of violation of principles of natural justice, and as not having been granted sufficient opportunity to file their objections to the show cause notice, is unfounded. The very fact that no revisional order was passed till 10.03.2004 shows that respondent had accommodated the petitioner for more than one month, as sought for by them in their letter dated 30.12.2003, and for nearly one month as sought for by them in their letter dated 13.02.2004. No statutory provision or rule which obligated the Deputy Commissioner (CT) to repeatedly grant adjournments, at the mere asking of the petitioner and without any cause, let alone justifiable cause therefor, has brought to our notice. Even for us to examine the genuineness of the petitioner's request for grant of adjournment to file objections, no reasons are discernable from the affidavit filed in support of the writ petition, as to what necessitated the petitioner to seek repeated adjournments.

Exercise of power under Article 226 of the Constitution is discretionary and the Court may, in appropriate cases, refuse to exercise its discretionary jurisdiction for good and valid reasons, (**Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group.**[1]; **Board of Trustees of Port of Kandla Port v. Hargovind Jasraj**[2]; **Pune Municipal Corporation v. State of Maharashtra**[3]; **State of Punjab. v. Gurdev Singh**[4]; **R. Thiruvirkolam v. Presiding Officer.**[5]; **State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil (dead)**[6] and **Tayabbhai M. Bagasarwalla v. Hind Rubber Industries Pvt. Ltd. etc.**[7]), including on its being satisfied that the petitioner has come to the Court with unclean hands. The petitioner has not filed copies of the letters of adjournments which they had submitted to the respondents. They have also not filed a copy of the 2nd eligibility certificate. Further, the affidavit filed in support of the Writ Petition makes no mention as to how the petitioner was entitled to claim tax holiday on sale of rough granite slabs when the first eligibility certificate referred only to grant of tax holiday for production of granite stone panels. We see no reason, therefore, to now grant the petitioner time to file their objections to the show cause notices issued by, or to set aside the impugned orders of revision, passed by the Deputy Commissioner (CT) in the exercise of his revisional jurisdiction under Section 20(2) of the APGST Act, on this ground.

Viewed from any angle, the orders under challenge in this writ petition do not necessitate interference. 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, J

SURESH KUMAR KAIT, J

Date: 25.04.2016

v v

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[1] (2011) 3 SCC 363

[2] (2013) 3 SCC 182

[3] (2007) 5 SCC 211

[4] (1992) ILLJ 283 SC

[5] (1997) 1 SCC 9

[6] (1996) 1 SCC 435

[7] (1997) 3 SCC 443