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

Writ Petition No.42903 of 2015

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

The proceedings under challenge in this writ petition is the assessment order passed by the Commercial Tax Officer on 26.03.2015, and the consequential garnishee proceedings issued under Section 29 of the A.P.Value Added Tax Act, 2005 (for short "the Act") dated 27.10.2015.

While the assessment order is not, *per se,* under challenge in this writ petition, Sri V.Bhaskar Reddy, learned counsel appearing on behalf of the petitioner, would submit that the assessing authority ought to have entertained the petitioner's application dated 15.12.2015, he should have taken into consideration the 'C' Forms produced by the petitioner, and thereafter ought to have reduced the tax liability to the extent 'C' Forms were produced. According to the learned counsel, the assessing authority should also have entertained the petitioner's application, under Rule 60 of the A.P.Value Added Tax Rules, 2005 (for short "the Rules"), to correct the error in the monthly returns filed by them earlier.

On the question whether 'C' Forms can be received by the assessing authority, after the assessment order is passed, Sri V.Bhaskar Reddy, learned counsel appearing on behalf of the petitioner, would rely on the judgments of this Court in ***M/s. A.C.Traders vs. State of Andhra Pradesh*** (judgment in W.P.Nos.33059 and 33129 of 2015 dated 08.10.2015); ***Batronics India Limited vs. Commercial Tax Officer***[1] and ***Godrej Agrovet Limited vs. Commercial Tax Officer***[2]; and to the judgment of the Supreme Court in ***State of Andhra Pradesh vs. Hyderabad Asbestos Cement Production Limited***[3], to contend that, in view of

Rule 12(7) of the CST (R & T) Rules, 1957 read with its proviso, the assessing authority has the power to receive the 'C' Forms filed subsequent to the assessment order; and that Rule 60 of the Rules enables the assessing authority to rectify errors, even if it be in the monthly returns filed by the assessee.

On the other hand, Sri M.Govind Reddy, learned Special Standing Counsel for Commercial Taxes, would submit that, once an order is passed, the assessing authority becomes *functus officio*; he is not entitled thereafter to entertain any application, as it would then amount to his reviewing the earlier order; the Act does not confer the power of review on the assessing authority; the observations of the Division Bench, in ***Rajeswari Stone Polishers vs. State of Andhra Pradesh***[4], do not constitute a binding precedent; and while the appellate authority may be entitled to receive 'C' Forms, in an appeal preferred by the assessee against the assessment order, that does not mean that the assessing authority can re-open the assessment and reduce the assessee's tax liability based on the 'C' Forms produced by him after the assessment order is passed.

Rule 12(7) of the CST (R&T) Rules, 1957, as it then stood, stipulated that the declaration in Form 'C' or Form 'F' or the certificate in Form 'E-I' or 'E-II' shall be furnished to the prescribed authority upto the time of assessment by the first assessing authority. Under the proviso thereto, if the prescribed authority was satisfied that the person concerned was prevented by sufficient cause from furnishing such declaration or certificate within the aforesaid time, the authority could allow such declaration or certificate to be furnished within such further time as that authority may permit.

In ***Rajeswari Stone Polishers***[4], the Division Bench of this Court observed :-

> "…….*Sub-rule (7) of rule 12, as stated hereinbefore, empowers the first assessing authority to receive C forms even after making the assessment, provided the dealer satisfies him that he was prevented by sufficient cause from filing the said forms before making of the assessment.* ***The proviso to sub-rule (7) does not***

prescribe any time within which a dealer can file C forms, which means that at any time after making of the assessment, a dealer can file the forms and so long as he is able to satisfy the authority about the sufficient cause contemplated by the proviso, the authority shall have to receive those forms. *Ordinarily, an assessee has to follow this course alone. But, where an appeal is pending against the order of assessment - it is immaterial whether the appeal is confined only to the rate of tax under the Central Sales Tax Act or whether it involves other issues besides the rate of tax under the C.S.T.Act and the assessee-appellant seeks to file the C forms in such an appeal, is it to be held that the appellate authority has no power to receive the same and should necessarily direct the assessee to approach the first assessing authority ? In other words, is it to be held that the appellate authority has no power to go into the question of sufficient cause contemplated by the proviso to rule 12(7) ? We see no reason to take such a narrow view, when the appellate authorities not only possess all the powers of the original authority, but also are expressly empowered the receive additional evidence in appeal, which power too, as we shall presently point out, is circumscribed in a manner similar to the power under the proviso to rule 12(7).* ***We hold that the appellate authority does have the power to receive these forms, on proof of sufficient cause contemplated by rule 12(7); of course, it has a choice in the matter - if it feels that the reasons shown by the appellant are sufficient as to require no further inquiry, it may itself condone the delay and receive the C forms, but if it thinks that the question of sufficient cause, calls for a further inquiry, or investigation into facts, which it cannot conveniently do, it can remit the matter to the assessing authority to determine the said issue***……….” (emphasis supplied)

The scope of Rule 12(7) of the CST (R&T) Rules, 1957 fell for consideration in ***Hyderabad Asbestos Cement Production Limited***[3], and the Supreme Court observed:

"…….*While the main limb of sub-rule (7) says that Form-C can be furnished "up to the time of the assessment by the first assessing authority", the proviso says that if the prescribed authority is satisfied that the dealer was prevented by sufficient cause from furnishing such certificate "within the aforesaid time-limit" he may allow such certificate to be furnished within such further time as he may permit.* ***Reading sub-rule (7) as a whole it follows that Form-C shall be furnished up to the time of assessment by the first assessing authority but in a proper case the prescribed authority (which means in the context the assessing authority) may permit such forms to be filed within such further time as he may permit. This necessarily means that the assessing authority will complete the assessment but at the same time permit the dealer to file Form-C within the time specified by him. In case the dealer files form-C within the time specified, it is obvious, the assessing authority will revise the order of assessment granting the requisite relief***…….

…….*The aforesaid observations show that the mere use of the words "the first assessing authority" in sub-rule (7) of Rule 12 cannot and does not mean, in the context and scheme of the enactments concerned herein, that the appellate authorities do not* *have the power to receive Form-C in appeal.* ***This power can of course be exercised only where sufficient cause is shown by the dealer for not filing them up to the time of assessment before the first assessing authority. If in a given case, a dealer had obtained further time from the first assessing authority and yet failed to produce them before him, it is obvious that the appellate authority would adopt a stiffer standard in judging the sufficient cause shown by the dealer for not producing them earlier. It is necessary to reiterate that receipt of those forms in appeal cannot be a matter of course; it should be allowed only where sufficient cause is established by the dealer for not producing them before the first assessing authority as contemplated by Rule 12(7). The requirement of the said sub-rule cannot be excluded from consideration by the appellate court, while judging the sufficiency of the cause shown. It must be remembered that that is the primary obligation of the dealer and his failure to abide by it must be properly explained.*** *Insofar as the Sales Tax Appellate Tribunal under the Andhra Pradesh Act is concerned, it is governed by Regulation 11(1) referred to hereinabove which again is nothing but a reiteration of the very same power……..”* (emphasis supplied)

In ***Batronics India Limited***[1], the Division Bench of this Court, following the judgment in ***Rajeswari Stone Polishers***[4], observed:-

"……….*It is thus clear that sub-rule (7) of Rule 12 of the Rules confers power upon the assessing authority to receive C forms where sufficient cause is shown by the dealer for not filing them up to the time of assessment.* ***There is no limitation as such provided for receiving the C forms and they can be received at any time after the order of assessment, provided sufficient cause is shown. We may, however, hasten to add that the making of assessment itself cannot be postponed at the instance of a dealer in order to enable the dealer to produce such C forms, if such postponement results in bar of limitation in making the assessment. It means that if an assessment can be postponed and if such postponement is not hit by the limitation, time can always be extended by the assessing authority in order to enable any dealer to produce the C forms and in case, if such C forms are not produced, it does not take away the right of the dealer to produce them after making of the assessment order, provided a sufficient cause is shown***……….” (emphasis supplied)

Again in its order in ***M/s. A.C.Traders vs. State of Andhra Pradesh*** (W.P.Nos.33059 & 33129 of 2015 dated 08.10.2015) a Division Bench of this Court, relying on the judgment in ***Godrej Agrovet Limited***[2], held that ‘C’ Forms filed after passing of the assessment order necessitates consideration; and a discretion has been given to the Assessing Officer to entertain an application for receiving ‘C’ Forms even after an assessment order is passed.

It is no doubt true that Rule 12(7) of the CST (R&T) Rules, 1957 was substituted with effect from 16.09.2005 and, after its substitution, the said Rule stipulates that the declaration in Form ‘C’ or Form ‘F’ or the certificate in Form ‘E-I’ or ‘E-II’ shall be furnished to the prescribed authority within three months after the end of the period to which the declaration or certificate relates. Unlike the pre-amended Rule 12(7), which stipulated that the declaration or certificate shall be furnished to the prescribed authority upto the time of assessment by the first assessing authority, the substituted Rule 12(7) now requires the declaration to be furnished to the prescribed authority within a period of three months after the end of the period to which declaration or certificate relates. The proviso to Rule 12(7), however, remains unchanged and enables the prescribed authority, if it is satisfied that the person concerned was prevented by sufficient cause from furnishing such declaration or certificate within the aforesaid time, to allow such declaration or certificate to be furnished within such further time as that authority may permit.

While the question whether sufficient cause was shown is a matter for the assessing authority to consider, we must express our inability to agree with Sri M.Govind Reddy, learned Special Standing Counsel for Commercial Taxes, that the assessing authority has become *functus officio* after an assessment order is passed; and is disabled thereafter from entertaining an application to receive ‘C’ forms.

We must also express our inability to agree with the submissions of the learned Special Standing Counsel that the observations in ***Rajeswari Stone Polishers***[4] are mere passing observations. While the question, which arose for consideration in ***Rajeswari Stone Polishers***[4], was whether a request to receive ‘C’ forms could be entertained by the appellate authority, the Division Bench examined the scope of Rule 12(7) of the CST (R&T) Rules, 1957 and its proviso, and observed that the said rule does not disable even the assessing authority to receive 'C' Forms after an assessment order is passed. The law declared in ***Rajeswari Stone Polishers***[4] has been followed by the several judgments of this Court as aforementioned. Further the Supreme Court, in ***Hyderabad Asbestos Cement Production Limited***[3], has also taken a similar view. We see no reason, therefore, to hold that the assessing authority is disabled from considering the petitioner's request to receive 'C' forms after the assessment order is passed, and to modify the assessment order to that limited extent.

As the question of sufficient cause has to be examined by the assessing authority, ends of justice would be met if the assessing authority is directed to consider the petitioner's application dated 15.12.2015, decide whether sufficient cause has been shown by the petitioner for the belated submission of the 'C' Forms and, if he is satisfied that sufficient cause has been shown, to then consider whether the 'C' Forms should be accepted, and whether the assessment order, to the extent 'C' forms were produced, should be modified.

In his application dated 15.12.2015, the petitioner sought rectification of the monthly return filed by them earlier, invoking the jurisdiction of the assessing authority under Rule 60 of the Rules. Sri M.Govind Reddy, learned Special Standing Counsel for Commercial Taxes, would contend that an error in the monthly return would not fall within the ambit of Rule 60 of the Rules; and the error which can be rectified under Rule 60, is an error in the assessment order, and not in the monthly return filed by the assessee. As the assessing authority has not even considered the petitioner's request under Rule 60 of the Rules, it would be wholly inappropriate for us to examine whether or not Rule 60 of the Rules is attracted in cases where there is an error in the monthly return filed by the assessee, and not an error in the assessment order. The assessing authority shall consider the petitioner's representation dated 15.12.2015 to rectify the error in the monthly returns, in accordance with law. It is made clear that we have not expressed any opinion on the question whether Rule 60 of the Rules is applicable to errors in the monthly returns filed by the assessee or whether it is limited only to errors in the order passed by the assessing authority. The assessing authority shall consider the petitioner's representation dated 15.12.2015, as directed hereinabove at the earliest and, in any event, not later than two months from the date of receipt of a copy of this order, after providing the petitioner an opportunity of an oral hearing.

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

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 28.01.2016
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<u>THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN</u>

AND

<u>THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY</u>

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[1] (2014) 58 APSTJ 47 (APHC)

[2] (2005) 41 APSTJ 92 (APHC)

[3] (1994) 94 STC 410

[4] (1983) 52 STC 268