IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

The Hon'ble Sri Justice V.RAMASUBRAMANIAN
and
The Hon'ble Sri Justice ABHINAND KUMAR SHAVILI

WRIT PETITION No.32911 OF 2017

Between:

M/s.Vyjayanthi Exports,
31-B, Near Mirchi Yard, Subbareddy Nagar,
Guntur, Guntur District, A.P., rep. by its
Managing Partner K. Arla Reddy

...Petitioner

Vs.

Commercial Tax Officer,
Lalapet Circle, Guntur I Division,
11-1-73/1, 1st Floor, Vasundara Complex,
Rajaji Bhavan, Sri Balaji Housem Zinnah
Tower Centre, Guntur and others

.. Respondents

For Petitioner : Sri S.R.R. Viswanath

For Respondents : Sri Shaik Jeelani Basha

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.32911 OF 2017

ORDER: *(per V. Ramasubramanian, J)*

The petitioner has come up with the above writ petition challenging the show cause notice issued by the assessing officer, pursuant to an order of remand passed by the 1st appellate authority.

2. Heard Mr. S.R.R. Viswanath, learned counsel for the petitioner and Mr. Shaik Jeelani Basha, learned Special Standing Counsel for the respondent Nos.1 and 2.

3. The assessing officer passed an order of assessment on 12.03.2014, determining the tax due as Rs.10,48,820/-, after finding that the petitioner had not filed 'H' declaration forms. The petitioner made a request on 20.06.2015, nearly after 15 months of the order of assessment, to take into account the declaration forms furnished by him. By an endorsement dated 25.07.2015, the assessing officer refused to take into account the declaration forms.

4. Challenging the endorsement dated 25.07.2015, the petitioner filed an appeal to the Appellate Deputy Commissioner. The Appellate Deputy Commissioner allowed the appeal by an order dated 31.12.2015 and remanded the matter back to the assessing authority to undertake the assessment afresh.

5. Thereafter, the assessing officer issued a show cause notice, dated 30.08.2017, holding that the 'H' declaration forms produced after the assessment, cannot be looked into. Therefore, challenging the said show cause notice, the petitioner is before this Court.

6. The contention of Mr. Shaik Jeelani Basha, learned Special Standing Counsel, is that the original order of assessment dated 12.03.2014 was not challenged by the petitioner in an appeal. What was challenged by the petitioner was an endorsement made by the assessing officer, on a request made after 15 months of the assessment, refusing to look into the 'H' declaration forms. Therefore, the learned Special Standing Counsel contended that it was the First Appellate Authority's order which was completely without jurisdiction and that the same went beyond the scope of the appeal. In other words, the contention of the learned Special Standing Counsel is that the First Appellate Authority has set aside an order of assessment, which was not under appeal before him and that by taking an appeal against a subsequent endorsement, the First Appellate Authority has set aside the order of assessment not under challenge before him.

7. We have carefully considered the above submissions. It may be true that the First Appellate authority went beyond the brief. But, unfortunately, the assessing officer cannot go beyond his jurisdiction to question the correctness of an order passed by the First Appellate Authority. It is not as though the department has no remedies as against the First Appellate Authority's order. Instead of taking recourse to other remedies available as against the First Appellate Authority's order, the assessing officer has chosen to issue the impugned show cause notice, challenging the findings of the First Appellate Authority. This is not permissible in law.

8. Therefore, the writ petition is allowed and the impugned show cause notice is set aside. If the department is aggrieved, it is always open to them to take recourse in a manner known to law as against the First Appellate Authority's order.

9. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

ABHINAND KUMAR SHAVILI, J

October 12, 2017

KTL