THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE MS. JUSTICE J. UMA DEVI

WRIT PETITION No. 1345 of 2017

ORDER: ***(Per VRS,J)***

The assessee has come up with the present writ petition, challenging an order passed by the 2nd respondent under Section 32(2) of the Andhra Pradesh Value Added Tax Act, 2005 (for short "the Act").

2. Heard Mr. T. Sreedhar, learned counsel for the petitioner, and Mr. S. Suribabu, learned special standing counsel for Commercial Taxes (AP), appearing for the respondents.

3. The assessment for the period from 01.10.2010 to 30.06.2012 was completed by the proceedings of the Assessing Officer, dated 19.11.2012. The same was challenged before the appellate authority and the appellate authority allowed the appeal on 20.07.2013.

4. After about two years, the 2nd respondent issued a show-cause-notice, dated 30.07.2015, seeking to revise the assessment *suo moto*. The petitioner filed objections, but the objections were over-ruled and the impugned order making a demand of Rs.1,15,03,067/- was passed. Aggrieved by the said order, the assessee is before us.

5. The main grounds of attack of the petitioner/assessee to the impugned order are two-fold, namely, (a) that the impugned order is a non-speaking order which does not consider any of the objections raised by the petitioner, and (b) that the original order of assessment has already been modified by the order passed in the statutory appeal by the Appellate Deputy Commissioner.

6. But, both the above grounds are not sufficient to allow the petitioner to bypass the alternative remedy of appeal. It is only in cases where the principles of natural justice are violated or where the question of jurisdiction is raised, that an assessee can bypass the alternative remedy and come up with a writ petition under Article 226. The impugned order shows that all the objections of the writ petitioner were taken note of. It is true that the Assessing Officer could have dealt with each of those objections. He did not do so. But, the same may be a good ground for an appeal and not for bypassing the alternative remedy of appeal. Hence, the first contention is liable to be rejected.

6. Regarding the second contention, the reliance placed upon a decision of the Hon'ble Supreme Court in ***Kunhayammed and others Vs. State of Kerala***[1], which revolves around the doctrine of merger, appears to be misplaced. The very power available under Section

[1] (2000) 6 SCC 359

32(1) of the Act is for revising an order of assessment either *suo moto* or otherwise. While dealing with a question of the power to revise an order of assessment, the question of merger would not apply. If the doctrine of merger applies, no order of assessment can ever be reopened and revised. Moreover, the only exclusion under the proviso to Section 32(2) is in cases where the assessment has been confirmed on an appeal by the appellate Tribunal under Section 33. Therefore, the second contention is contrary to the power conferred by Section 32.

7. There are only two or three restrictions placed under Section 32 for the exercise of the *suo moto* power. These restrictions are not violated in the case on hand. Therefore, the petitioner, who might have a good case on appeal, cannot bypass the alternative remedy of appeal, to come up before this Court. Hence, the Writ Petition is dismissed, leaving it open to the petitioner to raise all contentions before the appellate authority.

Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J.

17th January, 2017
cbs

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