THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

THE HON'BLE MS JUSTICE J.UMA DEVI

TREVC NO.3 OF 2017

ORDER: (Per the Hon'ble Sri Justice V.Ramasubramanian)

Aggrieved by an order passed by the Sales Tax Tribunal, Andhra Pradesh, refusing to entertain an appeal arising out of the order passed by the first Appellate Authority, the dealer under the APGST Act, 1957, has come up with the present Tax Revision Case.

2. Heard Mr. P.Girish Kumar, learned counsel for the petitioner and Mr. S.Suri Babu, learned Special Standing Counsel appearing for the respondents-State.

3. As against an order of assessment passed on 29.03.2006 by the Commercial Taxes Officer, the petitioner/dealer filed a regular appeal before the Appellate Deputy Commissioner, however, after a delay of 131 days. Since the first appellate authority did not have the power to condone the delay of more than thirty (30) days, the first appellate authority rejected the appeal.

4. As against the rejection of the appeal by the first appellate authority, the petitioner/dealer filed a second appeal before the Sales Tax Appellate Tribunal. Without going into the merits of the dispute, the Tribunal dismissed the second appeal on the ground that the first appellate authority could not have done what the statute prohibited the first appellate authority from

doing. Aggrieved by the said order, the petitioner has come up with the present revision.

5. The petitioner has raised the following questions of law on which we issued notice to the respondents on 02.02.2017.

(1) Whether the Tribunal can dispose of the appeal without considering the correctness of the assessment in question as contemplated under clauses (i) & (ii) sub-section (4) of Section 21 of the APGST Act?

(2) Whether the clause (iii) of sub-section (4) of Section 21 of the APGST Act empowers the Tribunal to dispose of the appeal without going into the correctness of the assessment or penalty or both contemplated under the previous clauses i.e. clause (i) & (ii) of sub-section (4) of Section 21?

(3) Whether the Tribunal being a creature under statute can go into the statutory restriction imposed on Appellate Deputy Commissioner in condoning the delay of more than 30 days and thereby make the statutory remedy of Appeal (Under Section 21 of the Act) nugatory by restricting its consideration only to the power of the Appellate Deputy Commissioner and not considering the merits and demerits of the assessment in question?

(4) Whether the Tribunal can proceed only under clauses (iii) of sub-section (4) of Section 21 to dispose of the appeal ignoring the previous two clauses under Section 21 (4) whereunder it is mandatory for the Tribunal to look into the correctness of the assessment in question in view of specific language/proviso under clauses (i) & (ii) of sub-section (4) of Section 21 of the APGST Act?

(5) Whether the Tribunal erred in dismissing the appeal without taking into consideration the suspension of the orders of the Hon'ble High Court passed in the case of M/s.Akkamma Traders reported in 53 APSTJ 1 by the Hon'ble Supreme Court of India and without differing the hearing of the appeal till the decision of the Hon'ble Supreme Court on the question of maintainability of appeal under Section 19 and Section 21 of the APGST Act?

6. However, on a closer scrutiny, we find that the only question of law that arises for consideration in this revision could be stated in short as follows:

> "Whether the power conferred upon the Tribunal under Section 21(4), would include a power to scrutinize the original order of assessment, especially in cases where the first appellate authority refused to entertain the appeal either on the ground of limitation, beyond the condonable period or on the ground of non-compliance with the pre-deposit condition or not?"

7. The main contentions of Mr. P. Girish Kumar, learned counsel for the petitioner, are as follows:

(1) that Section 21(4) of the APGST Act, 1957, confers power upon the appellate Tribunal to conform, reduce, enhance or annul the assessment or set aside the assessment or penalty and direct the assessing authority to pass a fresh order after such further enquiry as may be directed and that, therefore, the Appellate Tribunal was duty bound, by the language of Section 21(4) to examine the correctness of an order of assessment, despite anything that had happened before the first appellate authority;

(2) that a comparison of the provisions of Section 19(3) with Section 21(4) and with Section 22(4)(a) would show that the appellate Tribunal has been conferred the same powers as that of the first appellate authority while the Special Tribunal has been conferred with a different power under Section 22(4)(a), giving a clear indication that the Tribunal, as a second appellate authority, is entitled to scrutinize the order of assessment and;

(3) that in taxation statutes, there is no question of examining the intendment or purpose and that words of a statute should be given literal meaning when they are clear irrespective of the consequences.

8. In response to the above contentions, it is submitted by Mr. S.Suri Babu, learned Special Standing Counsel for the respondents, that by requesting the second appellant authority to examine the correctness of the original order of assessment, the petitioner was requesting the second appellate authority to indirectly entertain a first appeal, when the first appeal was prohibited by law. It is his contention that when a statute does not permit something to be done directly, it shall not be permitted to be done indirectly.

9. We have carefully considered the above submissions.

10. It would be useful to present, before we get into the correctness of the contentions, the provisions of Section 19(3), Section 21(4) and Section 22(4)(a) in a tabular column as follows:

Section 19(3)	**Section 21(4)**	**Section 22(4)(a)**
The appellate authority may, after giving the appellant an opportunity of being heard and subject to such rules of procedure as may be prescribed: (a)confirm, reduce, enhance or annul the assessment or the penalty, or both; or (b)set aside the assessment or penalty, or both, and direct the assessing authority to pass a fresh order after such further enquiry as may be directed; or (c)pass such other orders as it may think fit.	The Appellate Tribunal may, after giving both parties to the appeal a reasonable opportunity of being heard- (i)confirm, reduce, enhance or annul the assessment or the penalty or both; or (ii)set aside the assessment or the penalty, or both, and direct the assessing authority to pass a fresh order after such further inquiry as may be directed; or (iii)pass such other orders as it may think fit; Provided that if the appeal involves a question of law, a	If the High Court does not dismiss the petition summarily, it shall, after giving both parties to the petition, a reasonable opportunity of being heard, determine the question or questions of law raised and either reverse, affirm, or amend the order against which the petition was preferred, or remit the matter to the Appellate Tribunal with the opinion of the High court on the question, or questions of law raised, or pass such other order in relation to the matter as the High Court thinks fit.

	decision on which is pending in any proceeding before the High Court or the Supreme Court, the Appellate Tribunal may defer the hearing of the appeal before it, till such proceedings is disposed of.	

11. A careful look at the above provisions would show that the statute actually conferred similar or same powers upon both the authority prescribed under Section 19(1) and the appellate Tribunal, in contra distinction to a power conferred upon the revisional authority. The reasons are too obvious to be stated. The authority to whom an appeal could be filed under Section 19(1) is a first appellate authority and nothing more. But a Tribunal exercising power under Section 21, could both be a first appellate authority as well as a second appellate authority. In so far as the revisional authority is concerned, the revisional authority could either be a second appellate authority or a third authority. There was no scope for the revisional authority under Section 22 to be a first appellate authority for examining the original order of assessment. Keeping this fundamental distinction as between the powers conferred upon the various authorities, we may have to take up for consideration the contentions raised by the learned counsel for the petitioner.

12. As we have stated earlier, the first contention of the learned counsel for the petitioner revolves around the language employed in Section 21(4). But before looking at Section 21(4), which we have extracted above, we also have to take note of certain other provisions. Instead of extracting all the provisions, we can summarise the scheme of Section 19 in simple terms as follows:

(1) Under Section 19(1), a dealer objecting to an order passed or proceeding recorded by any authority under the provisions of the Act may appeal to an authority prescribed as the appellate authority.

(2) Such an appeal has to be filed within thirty (30) days, after which the appellate authority is conferred by the first proviso to sub-Section (1) of Section 19, to condone the delay up to a period of thirty (30) days.

(3) The right of appeal provided by Section 19(1), apart from being circumscribed by a period of limitation is also circumscribed by another prescription in the form of second proviso to sub-section (1) of Section 19 which mandates the dealer to pay the admitted tax and also pay 12½% of the difference between the tax assessed and the tax admitted for the relevant assessment year.

(4) In other words, there can be an appeal under Section 19(1) only, after the two prescriptions contained in the two provisos to sub-Section (1) of Section 19 are satisfied. To put it differently, an appeal filed beyond a period of sixty days or an appeal filed without proof of payment of admitted tax as well as 12½% of the differential tax, is no appeal in the eye of law under Section 19(1). If there is no appeal in the eye of law under Section 19(1), can there be a further appeal against something done by the first appellate authority, in terms of Section 21 is the question that requires to be addressed.

13. It must be remembered that though the statute uses the very same language both in Section 19(3) and in Section 21(4),

the statute also uses the very same language in sub-section (5) of Section 19 and sub-section (9) of Section 21. While Section 19(5) makes every order passed in an appeal under the Section, to be final subject to the provisions of Sections 20, 21, 22 and 23, sub-section (9) of Section 21 makes every order passed by the appellate Tribunal, to be final subject to the provisions of Section 22. Therefore, an order passed in an appeal by the first appellate authority under Section 19(1) is what attains finality subject only to the statutory remedies available. If there is no appeal in the eye of law, the question of the same being subject to the provisions of Sections 20 to 23 does not arise.

14. Both Section 19(1) as well as Section 21(1) confer a right of appeal upon a dealer as against two things namely (a) any order passed and (b) proceeding recorded. The real question that should be determined in the case on hand is as to whether an order passed by the first appellate authority refusing to entertain an appeal that was filed beyond the period of limitation that could be condoned by him, is an order passed or proceeding recorded. In our considered view, the rejection of an appeal by the first appellate authority on the ground that the appeal was filed beyond a period of sixty days (30+30), cannot be construed as an order passed or proceeding recorded, as both these expressions would mean something done in exercise of the power conferred by Section 19(1). To put it differently, an order passed by the first appellate authority would be an order passed or proceeding recorded, only if what he had done fell within the jurisdiction that he was conferred. If the first appellate authority is not entitled to admit an appeal beyond a period of 60 days or if the first appellate authority is

incapacitated from entertaining an appeal due to non-compliance with the prescription contained in the second proviso to Section 19(1), his action in returning the appeal or rejecting the appeal is just a ministerial action and not a quasi-judicial action done by him in exercise of statutory prescription.

15. We must keep in mind the distinction of ministerial act, an administrative act and a quasi-judicial act. The power to entertain an appeal under Section 21 is a quasi-judicial act and not a ministerial act. It stands on a different footing from an order by which the appellate authority expressed inability by virtue of the statutory prescription, not to entertain the appeal.

16. The comparison made to the provisions of Section 22(4)(a), may not really advance the case of the petitioner for the simple reason that the revisional authority exercises only one type of power in contra distinction to two types of powers exercised by the Tribunal under Section 21. Under Section 21, the Tribunal exercises the powers of the first appellate authority as well as the second appellate authority. This explains the reason for the difference in the language.

17. Extensively quoting from the decisions of the Supreme Court in (1) **Dr Ganga Prasad Verma v. State of Bihar**[1], (2) **Ansal Properties & Industries Ltd. V. State of Haryana**[2], (3) **T.N. State Electricity Board v. Central Electricity Regulatory Commission**[3], (4) **Commissioner of Income Tax-III v. Calcutta Knitwears, Ludhiana**[4], (5) **Voltas Ltd. v. State of Gujarat**[5], (6)

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[1] **1995 Supp (1) SCC 192**
[2] **(2009)3 SCC 553**
[3] **(2007)7 SCC 636**
[4] **(2014)6 SCC 444**
[5] **(2015)7 SCC 527**

Sneh Enterprises v. Commissioner of Customs, New Delhi[6] and (7) **RowlattJ in Cape Brandy Syndicate v. Inland Revenue Commissioner**[7], it was contended by Mr. Girish Kumar, learned counsel for the petitioner, that the Court has to give effect to the plain language of Section 21(4) and that in a taxation statute, there was no question of looking into the intendment or object behind Section 21(4).

18. We have no quarrel with any of the above prepositions, since all the decisions of the Supreme Court had followed the fundamental principle as enunciated by **RowlattJ in Cape Brandy Syndicate** (7 supra). All the decisions of the Supreme Court relied upon by the learned counsel for the petitioner, mandates the Court to do two things – (1) not to violate the plain language of the statute and (2) not to look for anything other than the literal meaning or look for any intendment or purpose.

19. We do not intend to look into the object behind Section 19(3) and the object behind scheme under Section 21(4). We do not wish to encroach upon the power conferred upon the appellate Tribunal under Section 21(4). All that we are examining now is as to whether there was "any order passed" or "proceeding recorded", by the first appellate authority so as to make the appellate Tribunal entertain an appeal at all under Section 21(1). If there was no appeal before the first appellate authority, there can be no appeal before the second appellate authority. Therefore, the Tribunal was right, irrespective of the language employed, in rejecting the appeal, as the Tribunal could not have entertained an

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[6] **(2006)7 SCC 714**
[7] **(1921)1 KB 64**

appeal against a non-existent appeal before the first appellate Tribunal.

20. Hence, the question of law is answered against the preposition and the revision is dismissed. Miscellaneous petitions, if any, pending shall stand dismissed.

(V.RAMASUBRAMANIAN, J)

(J.UMA DEVI, J)

28th February 2017
RRB