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 Smt Justice T. RAJANI

<u>Writ Petition No.27148 of 2017</u>

Between:

M//s. Sumukha Exporter, Sy.No.700-2, Koduru village, Chilamatthur Mandal, Hindupur Circle, Ananthapur District, represented by its Proprietor D. Venkata Ramaswamy,

… Petitioner

Vs.

1. The State of Andhra Pradesh, represented by its Principal Secretary, Revenue (CT) Department, Velagapudi, Guntur District.

2. The Commercial Tax Officer (Audit) FAC, O/o the Deputy Commissioner of Commercial Taxes, Ananthapur District, A.P.

3. The Commercial Tax Officer, Hindupur Circle, Ananthapur District, A.P.

4. The Deputy Commissioner of Commercial Taxes, Ananthapur, A.P.

.. Respondents

For Petitioner	:	Mr. M.V.J.K. Kumar
For Respondents	:	Mr. Shaik Jeelnai Basha, Special Standing counsel for the Department

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE MRS. JUSTICE T. RAJANI

Writ Petition No.27148 of 2017

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

The petitioner has come up with the above writ petition challenging an order of assessment passed under the A.P. VAT Act 2005.

2. Heard Mr. M.V.J.K. Kumar, learned counsel for the petitioner. Mr. Shaik Jeelnai Basha, learned special standing counsel for the respondents.

3. As a matter of fact, as against the impugned order of assessment, the petitioner filed a statutory appeal along with an application for condonation of delay. Since the period of delay was beyond the condonable limit, the Appellate Authority could not condone the delay.

4. As against the order refusing to condone the delay, the petitioner came up with a writ petition in W.P.No.36348 of 2016. The said writ petition was dismissed by a Bench of this Court by an order dated 13-02-2017, the operative portion of which reads as follows:

> *"Unfortunately, the delay that the petitioner wanted the Appellate Authority to condone, was beyond the period up to which the Appellate Authority was competent to condone the delay under the statutory provisions. Now it is settled that even this Court cannot direct condonation or condone the delay beyond the period up to which a statutory authority is made eligible to condone the delay. Hence, the writ petition is dismissed. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs."*

5. As against the said order, the petitioner filed a Special Leave Petition in S.L.P. (Civil) No.14678 of 2017. But the same was dismissed by the Supreme Court by an order dated 09-05-2017.

6. Thereafter, the petitioner has come up with the above writ petition, contending that the original order of assessment, was passed on serious errors of law, which go to the root of the jurisdiction.

7. But the points that the petitioner has raised now in the present writ petition are the points that were available to be raised even in the previous writ petition. But the previous writ petition was confined only to the refusal of the Appellate Authority to condone the delay in filing the appeal. Therefore, the present writ petition may be hit by the principle of constructive *res judicata* on questions of "might and ought". Though the provisions of Code of Civil Procedure do not apply to the proceedings under Article 226 of the Constitution, it is now well settled that the principles of analogous to those found in the Code of Civil Procedure, can also be imported for the purpose of procedural issues.

Hence, the writ petition cannot be entertained. Therefore, it is dismissed. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

T. RAJANI, J

Date: 14-09-2017

Ksn