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.33868 OF 2017

Between:

M/s.Ananthasai Stone Crushing Pvt. Ltd.,
16-2-10/3/16, 2nd Floor, SriKrupa Market,
Malakpet, Hyderabad-500 036,
Rep. by its Director Mr. Gowrishetty Sripathi

...Petitioner

Vs.

The Deputy Commissioner (CT),
Charminar Division, Hyderabad
and others.

.. Respondents

For Petitioner : Sri Shaik Vaheeda Sushma

For Respondents : G.P. for Commercial Tax (TG)

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.33868 OF 2017

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

The petitioner has come up with the above writ petition challenging a revised assessment order passed by the 1st respondent, under Section 32 (2) of the Telangana Value Added Tax Act, 2005.

2. Heard Mr. Bhaskar Reddy Vemireddy, learned counsel for the petitioner and Mr.T.Vinod Kumar, learned Special Standing Counsel for the respondents.

3. The main grounds on which the petitioner challenges the impugned revised order are (1) that there was no proposal with respect to invocation of Section 13(5)(d) insofar as the assessment order dated 20.11.2012 is concerned and (b) that the revisional authority could not have revised the original order of assessment, after the same having been set aside on an appeal filed by the Assessee.

4. We shall take up the second ground of attack first for disposal.

5. On facts there is no dispute that an order of assessment was passed originally on 14.05.2013. The petitioner filed an appeal. In the appeal the main grievance of the petitioner was that the claim for ITC was disallowed to a great extent.

6. By an order dated 18.05.2015, the First Appellate Authority found that there was no discussion in the original assessment order, with regard to the contention of the petitioner that the restriction of the input tax credit on the sales made to SEZ units, cannot be in respect of the entire financial year but should be limited to the last quarter. Therefore, the first appellate authority allowed the appeal and

remanded the matter back to the original Assessing Authority. The operative portion of the order of the First Appellate Authority, dated 18.05.2015 reads as follows:

> "Hence, the issue involved herein requires verification at the Assessing Authority's end. Hence, in fitness of matters, I feel it just and proper to remit the matter back to the territorial Assessing Authority, who shall verify the claim of the appellant with reference to the relevant documentary evidence that would be produced by the appellant and grant relief to the extent they are eligible for in accordance with the provisions of law. With this direction, the impugned order s set-aside in so far as it relates to the disputed tax amount of Rs.2,93,160/- and the appeal thereon remanded."

7. After the aforesaid order of remand, the Revisional Appellate Authority, who is also of the same rank as the First Appellate Authority, issued a revision show cause notice dated 20.02.2017. After the petitioner submitted their reply questioning the jurisdiction of the Revisional Authority, to invoke Section 32(2) of the Act, the Revisional Authority passed the order impugned in the writ petition.

8. The main contention of the petitioner is that once the original assessment order has been set aside and the matter remanded back to the Assessing Officer, the question of Revisional Authority revising the order of assessment does not arise. But, the contention of the learned Special Standing Counsel for the respondents is that the appeal filed by the petitioner against the original order of assessment, was confined to one aspect and that therefore, there was no impediment for Revisional Authority to revise the original order in respect of the portion as against which no appeal was filed.

9. Keeping the core legal issue aside for a moment, if we look at the order of the First Appellate Authority and the Revisional Authority, it can be seen that the entire dispute revolved around the disallowance of

the claim for ITC. Therefore, this is not a case where it is possible to split the rejection of the claim for ITC into two different areas. Hence, the Revisional Authority was not correct in exercising jurisdiction especially after the first appeal was allowed and the matter was remanded. In view of our finding on the second question, it is not necessary to go into the first question, since if the first question is answered in favour of the petitioner, the matter should go back to the Revisional Authority.

10. In view of the above, the writ petition is allowed and the impugned order is set aside. It is open to the Assessing Officer to pass consequential order, pursuant to the first appellate authority's order.

11. 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 26, 2017

KTL