

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
&
HON'BLE SRI JUSTICE CHALLA KODANDA RAM

W.P.No.34845 of 2017

Date: 01-11-2017

Between:

M/s. Super Spinning Mills Ltd.,
Represented by its authorised signatory
Mr.S. Venkata Reddy .. Petitioner

and

Joint Commissioner of State Tax
(formerly Deputy Commissioner of
Commercial Taxes),
Ananthapuram and others .. Respondents

Counsel for petitioner : Sri S.R.R. Viswanath
Counsel for respondents : Mr. S. Suri Babu, Special Standing
Counsel for Commercial Taxes

The Court made the following :

ORDER: (per Hon'ble Sri Justice C.V. Nagarjuna Reddy)

This Writ Petition is filed for issue of certiorari for quashing order dated 2-8-2017 vide D.C. Order No.1229/R.C.No.109/2014/F1-R.R.No.37/2014/F1, of respondent No.1.

We have heard Sri S.R.R. Viswanath, learned Counsel for the petitioner and Sri S. Suri Babu, Special Standing Counsel for Commercial Taxes (AP).

The petitioner is a dealer in cotton and its products. It is an assessee on the rolls of the respondent No.2-Assessing Officer. By his proceedings dated 29-3-2014 A.A.O.No.29358, respondent No.2 has determined the tax payable by the petitioner for the period from 1-4-2009 to 31-3-2010 as Rs.3,63,08,479/-. The said order was challenged by the petitioner in W.P.No.12652 of 2014. The main ground on which the said order was questioned was that though a request for affording an opportunity of personal hearing was made by the petitioner, respondent No.2 has passed the assessment order without giving such an opportunity and that the same was contrary to Circulars dated 4-5-2010 and 31-5-2013 issued by the Commissioner of Commercial Taxes, A.P., Hyderabad. By order dated 7-8-2014, a Division Bench of this Court set-aside the said assessment order leaving respondent No.2 free to make available copies of the documents referred to in the show cause notice and pass a fresh order after affording the

petitioner an opportunity of personal hearing. It is the common case of the parties that after the said order was set-aside, no immediate action was taken by respondent No.2. While the matters stood thus, respondent No.1 has issued pre-revision show cause notice dated 19-3-2016 in purported exercise of her power under Section 32(2) of the A.P. Value Added Tax Act 2005, r/w. Sections 50(1), 51, 14(11) of the Central Sales Tax (AP) Rules 1957, in respect of the omissions noticed pertaining to the exemptions already allowed by respondent No.2 in his assessment order dated 29-3-2014. In reply to the said show cause notice, the petitioner submitted its objections on 29-8-2016 wherein it was inter alia stated that it has filed W.P.No.12652 of 2014 against the order dated 29-3-2014 of respondent No.2, that this Court has allowed the said Writ Petition, that thereafter the petitioner has submitted various detailed documents and that proceedings before respondent No.2 are pending. Ignoring the said objections, respondent No.1 has passed the impugned order purporting to revise the assessment with reference to the final assessment proceedings dated 29-3-2014 of respondent No.2.

At the hearing, the learned Counsel for the petitioner has invited our attention to the fresh assessment order made by respondent No.2 on 9-8-2017.

It is evident from the chronology of events as borne out by the record, proceedings were taken out by respondent Nos.1 and 2 simultaneously with respect to the same subject matter, namely, the assessment of tax for the year 2009-10 of the petitioner-company. Respondent No.1 has committed a manifest error in purporting to exercise her jurisdiction under Section 32(2) of the Act with reference to a non-existent order i.e., order 29-3-2014, which was set-aside in W.P.No.12652 of 2014. Respondent No.1 has compounded the illegality by not even taking care to enquire into the fact pleaded by the petitioner, namely, that respondent No.2-Assessing Officer is seized of the issue of assessment after remand from this Court and that the proceedings are pending before him.

Section 32 of the Act conferred revisional powers on the Commissioner and other prescribed authorities. This provision, to the extent it is relevant, reads as under:

- (1) The Commissioner may suo motu call for and examine the record of any order passed or proceeding recorded by any authority, officer or person subordinate to him, under the provisions of the Act, including sub-section (2)

and if such order or proceeding recorded is prejudicial to the interests of revenue, may make such enquiry, or cause such enquiry to be made and subject to the provisions of the Act, may initiate proceedings. To revise, modify or set-aside such order or proceeding and may pass such order in reference thereto as he thinks fit.

- (2) Powers of the nature referred to in sub-section (1) may also be exercised by the Additional Commissioner, Joint Commissioner, Deputy Commissioner and Assistant Commissioner in the case of orders passed or proceedings recorded by the authorities, officers or persons subordinate to them;

Provided the power under sub-section (1) or (2) shall not be exercised by the authority specified therein in respect of any issue or question which was decided on appeal by the Appellate Tribunal under Section 33.

(Emphasis added)

It is clear from the above reproduced provision that the revisional power can be exercised by the competent authority in order to examine the record of any order passed or proceeding recorded by any authority, officer or person subordinate to him, under the provisions of the Act. It is evident from the impugned order that respondent No.1 has exercised her revisional power with reference to the final assessment proceedings dated 29-3-2014, which, as noted hereinbefore was set-aside by this Court in the Writ Petition and consequently it was no longer in existence when she has passed the impugned order in purported exercise of her revisional power. Respondent No.1 being a

functionary occupying a reasonably high position and exercising her quasi-judicial power is expected to be vigilant and responsible while dealing with the rights of the assesseees. We are not able to appreciate the callous and casual and negligent manner in which respondent No.1 has initiated the proceedings and passed the impugned order disregarding the fact of the assessment under revision not being in existence, as brought out by the petitioner in its objections filed before her. As the impugned order is patently without jurisdiction, the same is quashed, leaving the petitioner free to avail appropriate legal remedies if it feels aggrieved by the fresh assessment order passed by respondent No.2.

The Writ Petition is accordingly allowed with costs of Rs.10,000/- (Rupees ten thousand only). The State Government shall initiate appropriate proceedings for recovery of costs from the officer who passed the impugned order.

As a sequel to the disposal of the Writ Petition, WPMP No.43317 of 2017 filed for interim relief is disposed of as infructuous.

Justice C.V. Nagarjuna Reddy

Justice Challa Kodanda Ram

Date : 01-11-2017
L.R. copies
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