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.34329 OF 2017

Between:

M/s.Medikonda Constructions Private Limited,
D.No.26-11-3330-1A, Chitanyapuri, Vedayapalem,
Nellore District, Andhra Pradesh,
Rep.by its Managing Director Mr. M. Padma Mohan

...Petitioner

Vs.

The Commercial Tax Officer,
Circle-II, Nellore, Nellore District,
Andhra Pradesh and others.

.. Respondents

For Petitioner : Sri Bhaskar Reddy Vemireddy

For Respondents : G.P. for Commercial Tax (AP)
Sri S. Suri Babu

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.34329 OF 2017

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

The petitioner has come up with the above writ petition challenging an order of assessment passed under Andhra Pradesh Value Added Tax Act, 2005 (for short 'the Act').

2. Heard Mr.Bhaskar Reddy Vemireddy, learned counsel for the petitioner and Mr. S. Suribabu, learned Special Standing Counsel for the respondents.

3. The petitioner has an effective alternative remedy of appeal to the Appellate Deputy Commissioner. But, they have chosen to bypass the alternative remedy of appeal and to come up with the above writ petition primarily on the ground of non-consideration of material facts pleaded by them in the reply to the show cause notice. Particularly, the objection of the petitioner revolves around two things, namely, (a) the non consideration of two memos issued by the Government of Andhra Pradesh, permitting the excavation of sand and soil free of cost, subject to payment of seigniorage fee, for the year 2014-15 and (b) the non-consideration of the entitlement of the petitioner to exemption under Section 4(7)(g) of the Act.

4. It is true that the petitioner raised in their reply, the benefits that they received under two Government Memos and the Government Order. It is also true that the impugned order dealt with the Government Order but not the Government Memos.

5. But nevertheless, the impugned order shows that benefit has been granted to the petitioner atleast to some extent, with respect to

the seigniorage fee, and that the Assessing Officer took into account, the books of accounts.

6. If the petitioner is entitled to the benefit of two Government Memos relied upon by him, the same would have resulted in payment of seigniorage fee. The question as to the quantum of seigniorage fee paid by the petitioner, is a question of fact, which the petitioner can only agitate before the appellate Authority. Therefore, we do not think that the non-consideration by the Assessing Officer of the Government Memos, would automatically enable the petitioner to bypass the alternative remedy of appeal.

7. So is the case with regard to the second contention. It is not every non-application of mind that will fall squarely within the parameters of the violation of the principles of natural justice to enable the petitioner to bypass the alternative remedy of appeal. Therefore, we are of the considered view that the petitioner should raise all these objections before the appellate authority.

8. The impugned order is dated 09.08.2017. It was received by the petitioner on 16.08.2017. The time limit for filing an appeal expired on 15.09.2017. The condonable period expired on 15.10.2017. The petitioner filed the above writ petition on 12.10.2017. Therefore, the period during which the writ petition was pending before this Court cannot be included and should be excluded while calculating the condonable period.

9. In the result, the writ petition is dismissed, leaving it open to the petitioner to file an appeal. If the petitioner files an appeal before the First Appellate Authority, within a period of two (2) weeks from the date of receipt of a copy of this order, the First Appellate Authority shall

consider the same as having been filed within the condonable period and condone the delay and take up the appeal for disposal on merits.

10. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed. No order as to costs.

The Registry is directed to return the original impugned order to enable the petitioner to file the appeal.

V. RAMASUBRAMANIAN, J

ABHINAND KUMAR SHAVILI, J

October 26, 2017

KTL