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 MS. JUSTICE J. UMA DEVI

<u>WRIT PETITION No.11198 OF 2018</u>

Date: 04.04.2018

Between:

M/s.Nagendra Vara Prasad Traders,
Amalapuram, East Godavari District,
Rep. by its Proprietor K. Ganeswara Rao S/o.Simhadri

...Petitioner

Vs.

The State of Andhra Pradesh,
Rep. by its Principal Secretary, Revenue (CT)
Department, Velagapudi, Amaravathi, Guntur District,
Andhra Pradesh and others.

.. Respondents

For Petitioner : M/s.P.Balaji Varma

For Respondents : Sri S. Suribabu
Spl.Standing Counsel

Gist :

Head Note :

Cases Referred : Nil

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE MS. JUSTICE J. UMA DEVI

WRIT PETITION No.11198 of 2018

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

Aggrieved by the dismissal of a statutory appeal as against an order of assessment for the period from January, 2012 to June, 2014 under the Andhra Pradesh Value Added Tax Act, 2005, a dealer has come up with the above writ petition.

2. Heard Mr. P.Balaji Varma, learned counsel for the petitioner. Mr. S.Suribabu, learned Special Standing Counsel takes notice for the respondents.

3. The petitioner is a TOT Dealer. An order of assessment was passed on 31.12.2016 holding that there was a turn over in excess and that there was a consequent short payment of tax to the tune of Rs.2,86,851/-.

4. As against the order of assessment, the petitioner filed a first appeal before the Appellate Deputy Commissioner. The Appellate Authority dismissed the appeal by an order, dated 05.01.2018. Though the remedy of further appeal to the A.P.V.A.T. Appellate Tribunal is available to the petitioner, the petitioner has come up with the above writ petition on the short ground that the Appellate Authority was clearly in error in law in holding that there was no provision for allowing notional input tax credit. According to the learned counsel for the petitioner, the very charging Section makes the liability to pay tax, subject to the input tax credit. Therefore, the learned counsel contends that since the impugned order suffers from an apparent error in law, the same can be challenged by way of a writ petition.

4. But, we do not think so. If the petitioner had come up as against the original order of assessment, we could have considered the issue of violation of natural justice and the issue of jurisdiction. But once the first appellate remedy has been exhausted, there is no reason why the petitioner should be allowed to by-pass the remedy of a second appeal before the Tribunal. As a matter of fact, the second appeal before the Tribunal is capable of being considered both on facts and in law.

5. Therefore, leaving it open to the petitioner to challenge the impugned order before the Tribunal, the writ petition is dismissed. The office is directed to return the original impugned order to enable the petitioner to file a second appeal. Though the time limit for filing the appeal before the APVAT Tribunal appears to have expired, the period up to which the Tribunal can condone the delay, has not expired. Therefore, the Tribunal may take a lenient view in the matter of condonation of delay and deal with the appeal on merits if it is filed within the condonable period.

6. Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

April 04, 2018

KTL