THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.21984 OF 2018

ORDER
(*Per Hon'ble Sri Justice Sanjay Kumar*)

Challenge in this writ petition is to the revisionary order dated 24.05.2018 passed by the Additional Commissioner (CT) Legal, Office of the Commissioner of Commercial Taxes, Andhra Pradesh, the first respondent, against the petitioner firm in relation to the tax period 2012-13 under the Central Sales Tax Act, 1956 (*for brevity*, 'the Act of 1956').

The petitioner firm is a registered dealer on the rolls of the Assistant Commissioner (CT), LTU, Kadapa Division, Andhra Pradesh. It trades in Til (Sesame) seeds. For the tax period 2012-13, the Assistant Commissioner (CT), LTU, Kadapa Division, Andhra Pradesh, passed Assessment Order dated 02.06.2014 granting concessional rate of tax to the petitioner firm @ 2% on the turnover of Rs.9,83,96,786/- covered by 'C' forms after duly verifying that they were in order. He also granted exemption on the turnover of Rs.1,02,46,505/- relating to export sales covered by 'H' forms, bills of lading and agreement copies, after verifying that they were in order. However, in exercise of *suo moto* revisionary power under Section 32 of the Andhra Pradesh Value Added Tax Act, 2005 read with Section 9 of the Act of 1956, the first respondent issued pre-revision show-cause notice dated 05.01.2018 proposing to withdraw the concessional rate of tax and the exemptions granted by the Assessing Authority on the ground that there were some defects in the declaration forms and other documents. The petitioner firm submitted its reply, *vide* letter dated 13.01.2018, requesting the first respondent to return the defective declaration forms and documents for rectification after duly pointing out the defects therein. By Endorsement dated 09.02.2018, the first respondent permitted the petitioner firm to take back the defective declaration forms. The petitioner firm thereafter resubmitted the said forms after getting them rectified along with a detailed explanation, *vide* letter dated 20.04.2018, requesting the first respondent to drop further proceedings. The first respondent however issued hearing notice dated 10.05.2018 proposing to give a personal hearing to the petitioner firm on 21.05.2018. The petitioner firm addressed letter dated 16.05.2018 informing the first respondent that it had already submitted objections under its letters dated 20.04.2018 and 14.05.2018 along with documents after duly rectifying defective declaration forms as pointed out in the pre-revision show-cause notice and that it had no additional grounds for submission at the time of personal hearing, even if given. It accordingly requested the first respondent to consider its explanation and rectified documents and drop the proposed revision.

However, the first respondent passed the impugned revisionary order dated 24.05.2018 confirming the proposed withdrawal of the concessional rate of tax on the turnovers covered by 'C' forms and withdrawal of the exemptions covered by the 'H' forms, etc. According to the petitioner firm, the first respondent pointed out some new defects which had not been mentioned in the pre-revision show-cause notice for holding the declaration forms defective again. The petitioner firm further asserted that the transactions covered by the declaration forms were genuine and were capable of being verified independently.

The Additional Commissioner (CT) Legal, Office of the Commissioner (CT), Andhra Pradesh, the first respondent revisionary authority, filed a counter affidavit. He stated therein that sufficient opportunity was given to the petitioner firm to get the defects in the four declaration forms and other documents rectified, but the petitioner firm failed to take advantage of the same. According to him, even after resubmission of the said forms after rectification, the same were found unworthy of acceptance. He stated that a writ petition would not lie against his order dated 24.05.2018 as questions of fact had been raised by the petitioner. Nearly seven pages of the eleven page counter-affidavit were devoted to this exercise. He further stated that certain irregularities were pointed out in the pre-revision show-cause notice in relation to the four declaration forms and they were returned to the petitioner firm to enable it to rectify the same, but after their resubmission, he stated that the same were examined in the light of other objections and other documentary evidence subsequently filed. According to him, some of the originally pointed out defects were still found to be persisting and on that ground itself they could be rejected and were accordingly rejected. He however admitted that some more defects were also noticed in the light of the subsequently filed documents and information but did not advert to what were the subsequently filed documents and information which threw up these new defects. He also did not advert to what were the defects that had been pointed out originally in the pre-revision show-cause notice which continued to persist.

Perusal of the impugned revisionary order dated 24.05.2018 reflects that as regards the Certificate of Export in Form 'H' with No.12210189800513, the first respondent found the supporting 7 purchase orders to be unacceptable, as 4 out of the 7 were not decipherable at all and none of them were signed. As regards the two bills of lading filed by the petitioner firm, he opined that they were also not decipherable. He therefore held the allowance of exemption by the Assessing Authority on the turnover of Rs.66,84,375/- covered by this 'H' form to be erroneous. The manner in which the first respondent went on a nit-picking spree with the sole intention of holding against the petitioner firm is clear from the way he dealt with this Certificate of Export. The 7 purchase orders produced by the petitioner firm in this regard were rejected on flimsy grounds. One purchase order which bore the number ITC/2012-13/035 was rejected on the ground that it did not bear No.ITC-035!

In this regard, it may also be noted that the first respondent was exercising revisionary power in the year 2018 in relation to transactions of 2012-13. According to the petitioner firm, the purchase orders were received electronically and therefore there would be no signatures affixed thereon. The petitioner firm obtained copies of the purchase orders which were legible and also legible copies of the bills of lading and submitted the same before the first respondent. It pointed out that the Certificates of Export in Form 'H' were generated online from the website of the Maharashtra Government and requested the first respondent to cross verify the information with the concerned authorities in Maharashtra. The first respondent however baldly rejected this plea by saying that merely because the declarations were generated online, it could not be said that they were without defects. This reasoning is unsustainable. Lack of details in the online forms generated by the Maharashtra Government could not be laid at the door of the petitioner firm. Further, that would not be sufficient in itself to doubt the veracity of such 'H' forms. Significantly, the Assessing Authority had accepted the validity of the 'H' forms and except for the fact that the supporting documents produced by the petitioner firm were not decipherable to the eye of the first respondent, he had no other real basis to hold that they were not genuine. The first respondent did not even indicate as to whether he made any effort to cross verify with the authorities in

Maharashtra as to the genuineness of the certificates relied upon by the petitioner firm. The reasons cited by the first respondent to reject the 'H' forms in question do not commend themselves to be weighty enough for him to override acceptance of the same by the Assessing Authority, the second respondent.

As pointed out by this Court in M/S. SRINIDHI OIL PRODUDCTS V/s. THE ADDITIONAL COMMISSIONER (CT) LEGAL[1], once an Assessing Authority accepts the declaration forms and passes an order of assessment, the Revisionary Authority should normally go by it as rejection of the very same forms which were accepted by the Assessing Authority would tantamount to his finding fault with the manner in which the Assessing Authority accepted the forms. It was further pointed out that the Revisionary Authority has the power to do so but the question is as to the exercise of such power and in what circumstances such exercise could be justified.

As regards the proposed withdrawal of the concessional rate of tax in respect of the turnover covered by the 'C' forms, the defects noted by the first respondent were that the purchase order number/date was not indicated in the 'C' forms, the invoice details furnished on the back of the forms were not signed by the person signing the declaration, and the commodity and purpose was not specified. On the face of it, the first respondent seems to have gone witch-hunting with the decided purpose of rejecting the declarations in Form 'C'. This is clear from the fact that he was disinclined to believe one document only on the ground that the date of a telephonic call was not mentioned in the declaration.

[1] W.P.No.10314 of 2017 dated 06.04.2017

Significantly, the first respondent noted that as many as four notices were issued by him on 02.04.2018, 16.04.2018, 04.05.2018 and 16.05.2018 calling upon the petitioner firm to come for a personal hearing. He however admitted that *vide* letter dated 14.05.2018 the petitioner firm informed him that there were no additional grounds for it to represent personally. Perhaps, the insistence by the first respondent on a personal hearing despite the petitioner firm not wanting it speaks for itself.

Though the first respondent held forth at length in his counter-affidavit as to the maintainability of the writ petition, we are not impressed. As pointed out by a Division Bench of this Court in GAIL INDIA LTD. V/s. THE ASSISTANT COMMISSIONER, CT, KAKINADA[2], in exercise of its jurisdiction under Article 226 of the Constitution, the limited scope of examination in judicial review by this Court is to see as to whether or not the findings recorded by the authorities concerned are perverse. In the case on hand, we find it to be so.

It may also be noted that in M/S. SRINIDHI OIL PRODUDCTS[1], this Court pointed out that the Revisionary Authority should return the defective 'C' forms and give an opportunity to the dealer to rectify the defects before proceeding further. This view was taken in the light of the earlier decision of this Court in AGARWAL INDUSTRIES LIMITED V/s. COMMISSIONER OF COMMERCIAL TAXES, ANDHRA PRADESH, HYDERABAD[3].

The first respondent admitted in his counter affidavit that he found new defects in the declarations in Form 'C' and Form 'H' which were not mentioned by him earlier in his pre-revision show-cause notice. If so, he necessarily had to give a fresh opportunity to the petitioner firm to rectify

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[2] W.P.No.6826 of 2009 and batch dated 10.11.2014
[3] (2013) 61 VST 346

the new defects found by him. Without doing so, he could not have proceeded to hold against the petitioner firm in exercise of revisionary jurisdiction. Further, as already pointed out *supra*, the manner in which the first respondent went about dealing with the matter leaves much to be desired.

The writ petition is accordingly allowed setting aside the revisionary order dated 24.05.2018 of the first respondent and remanding the matter for fresh consideration. The first respondent shall return the defective declarations in Forms 'C' and 'H' to the petitioner firm, duly pointing out all the defects therein, and give it an opportunity to rectify the same. After resubmission of the rectified forms by the petitioner firm along with its detailed explanation and supporting material, if any, the first respondent shall proceed to examine the matter afresh in the light of the rectified forms, explanation and material that are submitted by the petitioner firm keeping in mind the observations made hereinabove and then pass a reasoned order on merits and in accordance with law.

Pending miscellaneous, if any, shall stand closed in the light of this final order. No order as to costs.

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SANJAY KUMAR, J

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T.AMARNATH GOUD, J

12th July, 2018
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