HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.28705 of 2018

ORDER: {Per Hon'ble Sri Justice Ramesh Ranganathan}

This writ petition is filed seeking a mandamus to declare the order passed by the Appellate Deputy Commissioner, Vijayawada dated 23.04.2018, rejecting admission of the penalty appeal, as illegal, arbitrary and against the provisions of the Andhra Pradesh Value Added Tax Act, 2005 (for short "the Act"). A consequential direction is sought to the Appellate Deputy Commissioner to entertain and decide the appeal, filed by the petitioner for the tax period 2013-14 and 2014-15, on merits.

The petitioner, a dealer carrying on business at Gudivada, Krishna District was assessed to penalty; and an order of penalty was passed on 21.05.2016. The said order of penalty was sent to the registered office of the petitioner, soon after it was passed. The petitioner, however, filed the present appeal claiming to have downloaded a copy of the order of penalty from the website of the Commercial Tax Department.

In the order, impugned in the writ petition, the appellate authority took note of the fact that the assessment order was sent to the place of business of the petitioner by Registered Post with Acknowledgement Due on 21.05.2016, but it was returned to the department stating that there was no such person in that address; the dealer did not approach the assessing authority to receive a coy of the original penalty order within time; and, therefore, the appeal was barred by limitation.

The Appellate Deputy Commissioner referred to Section 31(1) of the Act, and its proviso, whereunder an appeal is required to be filed within 30 days, and along with an application to condone the delay within a further period of 30 days. The order of penalty is dated 21.05.2016 and the impugned order records the assessing authority having sent it by Registered Post on 21.05.2016 to the address of the petitioner.

It is not the petitioner's case that the notice sent by Registered Post was not to the address furnished by him as the place of business. On the other hand, the petitioner claims that, as he was unwell, he went to Coimbatore to recuperate; it is only after he returned back to Gudivada in January, 2018 did he come to know that an order of penalty was passed on 21.05.2016; immediately thereafter, he made an application seeking a copy of the order; and, since a copy of the order was not furnished, he downloaded a copy of the penalty order from the web portal of the Commercial Tax Department, and preferred an appeal.

Except for a bald and vague assertion in the writ affidavit that he was unwell, no details are furnished by the petitioner regarding the nature of illness which made him stay away from Gudivada for nearly a year and half. The writ affidavit is also silent as to why the petitioner chose not to even intimate the authorities concerned that he would not be in station, or to furnish details to them of the place to which such notices could be sent.

As the limitation for filing an appeal, under Section 31(1) of the Act and its proviso, is 60 days from the date on which the copy of the order is received by the dealer; and as, in the present case, the order copy was sent by Registered Post with Acknowledgment

Due on 21.05.2016, the period of 60 days expired by the end of July, 2016. The present appeal was instituted only in May, 2018 nearly one year nine months after the time to prefer an appeal had expired.

The jurisdiction which this Court exercises, in proceedings under Article 226 of the Constitution of India, is supervisory and not appellate; and save patent illegality, in the order impugned in the writ petition, no interference is called for. The Appellate Deputy Commissioner has passed an elaborate order assigning reasons as to why the appeal could not be entertained. The said order does not suffer from any legal infirmity necessitating interference in proceedings under Article 226 of the Constitution of India.

The Writ Petition fails and is, accordingly, dismissed. Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

13th August, 2018
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HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.28705 of 2018

Date: 13.08.2018

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