THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

TAX REVISION CASE No.66 OF 2017

JUDGMENT: (per Hon'ble Sri Justice Sanjay Kumar)

This revision by the assessee under Section 34(1) of the Andhra Pradesh Value Added Tax Act, 2005, arises out of the order dated 31.05.2017 passed by the Telangana Value Added Tax Appellate Tribunal, Hyderabad, in T.A.No.632 of 2008.

The following questions of law are raised by the petitioner/ assessee:

> "1) Whether the findings and observations of the Hon'ble Tribunal are not perverse in the facts and circumstances of the case and weight of evidence on record?
>
> 2) Whether the Tribunal is correct in law in partly allowing and partly dismissing the appeal when it has confined its consideration only to one of the issues raised i.e. ITC issue?
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> 3) Whether the Hon'ble Tribunal is correct in law in not considering other issues though they were specifically raised in the grounds of appeal and argued at length particularly in the absence of any Memo filed on behalf of the petitioner confining the claim to some of the issues or one of the issue raised in the grounds of appeal?
>
> 4) What is the rate of tax applicable on the sale of Electrical Transformers in favour of APSPDCL and whether the disputed turnover of Rs.1,31,11,321/- is assessable to tax only at 5% under Entry 116 of Schedule IV or not?"

As the order under challenge proceeded on the purported concession made by the learned counsel for the petitioner/assessee that he would give up the other grounds raised in the appeal except the ground relating to input tax credit and as the petitioner/assessee denied such concession having been made, this Court adjourned the matter on 09.11.2017 to enable the learned counsel who appeared for the petitioner/assessee before the Appellate Tribunal to file an affidavit in that regard.

Thereupon, D.Bhanu Pratap, learned counsel for the petitioner/assessee before the Appellate Tribunal, filed affidavit dated 22.11.2017, wherein he categorically stated on oath that he argued all the grounds raised in the appeal and did not give up any of the grounds so raised.

Sri Anil Kumar, learned counsel for the Revenue, does not dispute the fact that in the grounds of appeal filed before the Appellate Tribunal, the petitioner/assessee raised not just the issue of input tax credit but also other issues in the context of the output tax and the rate of tax applicable to the disputed turnover. He however states that his counterpart is unable to recall as to whether the petitioner/assessee's counsel argued all those issues before the Appellate Tribunal.

Perusal of the letter dated 20.02.2018 addressed by G.Dwarakanath Reddy, Joint Commissioner (State Tax) and State Representative before the Telangana Value Added Tax Appellate Tribunal, reflects that he informed Sri Anil Kumar, learned counsel, that the issues raised by the counsel for the petitioner/assessee before the Appellate Tribunal were taken on record and the appeal was disposed of accordingly.

This letter does not shed any light on the controversy as to whether the petitioner/assessee's counsel addressed arguments on all the three issues raised in the grounds of appeal before the Appellate Tribunal or whether any such grounds were given up.

In the usual course, when an appellant seeks to give up any of the grounds raised in his appeal, a Memo is taken on record wherein he states so in clear terms. In the absence of such a procedure being followed, it is inevitable that a dispute may arise in this regard as had happened in the case on hand.

However, given the fact that the petitioner/assessee did, in fact, raise three separate issues in its appeal before the Appellate Tribunal, we are inclined to accept its plea that arguments were advanced on all three of them. There would be no reason as to why the petitioner/assessee would instruct its counsel to give up two of such grounds when they were separate and stand independent of the issue raised in relation to the input tax credit. Notably, the Tribunal did not even record that there were three issues raised and merely referred to the issues of output tax and input tax credit, overlooking the first issue relating to the rate of tax applicable to the disputed turnover. Further, the petitioner/assessee's plea is fortified by the sworn affidavit filed by its counsel who appeared before the Appellate Tribunal stating, in unequivocal terms, that he argued all the three grounds raised in the appeal.

In the light of the aforestated circumstances, keeping in mind the interest of justice, we are constrained to set aside the order dated 31.05.2017 passed by the Appellate Tribunal in T.A.No.632 of 2008. The said appeal shall stand restored to the file and the Appellate Tribunal shall adjudicate the matter afresh after giving an opportunity of hearing to both parties. As this is the second round of litigation, the Appellate Tribunal shall endeavour to pass final orders in the matter as expeditiously as possible and, preferably, within four weeks from the date of receipt of a copy of this order.

The revision is allowed to the extent indicated above.

Pending miscellaneous petitions, 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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D.V.S.S.SOMAYAJULU,J

Date: 07.03.2018
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