The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice T.Amarnath Goud

WP.No.41101 of 2017

Dt: 05-01-2018

Between:

M/s.The Ramco Cements Limited,
(formerly known as Madras Cements Limited)
Rep. by its President Mr.P.B.Gopalakrishna

….Petitioner

and

State of Andhra Pradesh
Rep. by its Prl.Secretary
Revenue (CT-II) Department
AP Secretariat, Velagapudi,
Guntur District and another

….Respondents

Counsel for the Petitioner: **Mr.K.Raji Reddy**

Counsel for the respondents: **Mr.Shaik Jeelani Basha**
Spl.SC for CT (AP)

The Court made the following:

Order: **(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)**

This Writ Petition is filed for issue of a Mandamus to set aside Orders, dated 03-11-2017 and 09-11-2017, of respondent No.2.

We have heard Mr.K.Raji Reddy, learned Counsel for the petitioner, and Mr.Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes (AP) appearing for the respondents.

The petitioner is a public limited Company incorporated for the purpose of manufacture and sale of Ordinary Portland Cement (OPC) and Portland Pozzolona Cement (PPC). The petitioner purchased one Rear Dumper from M/s.Bharat Earth Movers Limited, Bangalore, on 31-12-2005, for Rs.71,91,000/- and a Hydraulic Mobile Crane from M/s.Escorts Constructions Equipment Ltd., Faridabad, on 22.05.2010, for Rs.12,48,817/-. Respondent No.2 has issued two separate show cause notices on 25-07-2012 to M/s.Madras Cements Ltd., Jayanthipur, which is renamed as M/s.Ramco Cements Ltd., informing that under Rules 3(2) and 4 of the Andhra Pradesh Entry Tax Rules, 1996, the aforesaid two items are liable to tax @ 12.5%. The petitioner was, accordingly, called upon to file written objections, if any, against the proposed levy of entry tax. On receipt of the said notices, the petitioner has submitted detailed replies, on 16.08.2012, denying its liability. No order thereafter, in pursuance of the said show cause notices, was passed. However, respondent No.2 has issued a common proceeding, dated 24-06-2017, styled as notice for provisional assessment and demand whereunder he has provisionally assessed the two items purchased by the petitioner to entry tax at a total sum of Rs.9,14,466/-. It is stated therein that the tax shall be paid within 15 days from the date of service of notice by demand draft, failing which the amount would be recovered as if it were an arrears of land revenue apart from being liable to pay penal interest. A few months thereafter, *i.e.,* on 03-11-2017 & 09-11-2017, respondent No.2 has issued the final assessment orders confirming the provisional assessment order. Assailing both these proceedings, the petitioner filed this Writ Petition.

Mr.K.Raji Reddy, learned Counsel for the petitioner, submitted that respondent No.2 has failed to follow the prescribed procedure under the provisions of the Andhra

Pradesh Tax on Entry of Motor Vehicles into Local Areas Act, 1996 (for short 'the Act') and the Andhra Pradesh Tax on Entry of Motor Vehicles into Local Areas Rules, 1996 (for short 'the Rules'); that while Section 8 of the Act provides for assessment of entry tax, Rule 3 (4) of the Rules envisages provisional assessment and Rule 4 envisages final assessment and that before both these assessments are made, an opportunity of being heard requires to be given to the assessee.

The learned Counsel further submitted that in the instant case, though separate notices for both the items were issued on 25.07.2012 and the petitioner submitted separate replies on 16-08-2012, respondent No.2, without considering the same and without further notice, straight away issued the provisional assessment orders on 24-06-2017 and also the final assessment orders on 03-11-2017 and 09-11-2017. The learned Counsel has, accordingly, submitted that respondent No.2 has failed to follow the mandatory procedure prescribed under the Act and the Rules and thereby, violated the principles of natural justice.

Mr.Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes (AP) appearing for the respondents, sought to sustain the impugned orders.

We have considered the respective submissions of the learned Counsel for the parties with reference to the record.

Section 8 of the Act envisages assessment of entry tax. Sub-Section (3) thereof mandates that before any assessment is made, the assessing authority shall serve on the person concerned, in the prescribed manner, a notice requiring him, to attend on a date and at a place specified therein, and produce or cause to be produced, all evidence on which the said person relies in support of his return or to produce such evidence as specified in the notice and on the date specified in the notice, and as soon as may be, thereafter, the assessing authority shall after considering all the evidence which may be produced, assess the amount of tax due from the person.

The Rules were framed by the State Government in exercise of the powers conferred on it by Section 30 of the Act. Rule 3 enjoins upon every importer to file returns. Under Sub-Rule (4) thereof, where any importer fails to submit the return in respect of any month before the date prescribed in that behalf or if the return submitted appears to be incorrect or incomplete, the assessing authority shall after following the procedure prescribed in Rule 4 determine the purchase value to the best of his judgment and provisionally assess the tax or taxes payable for the month and shall serve upon the dealer a notice in Form D-1 and the importer shall pay the sum demanded within the time and in the manner prescribed in the notice.

Rule 4 (1) of the Rules provides for final assessment. Under Sub-Rule (2) thereof, before such final assessment is made, the assessing authority shall give the dealer an opportunity as mentioned in sub-Section (3) of Section 8 and determine the purchase value of the motor vehicles to the best of his judgment and finally assess in a single order, the tax or taxes payable.

The above discussed provisions would reveal that while the Act does not specifically envisage a provisional assessment, the Rules prescribe both provisional as well as final assessment. However, in either case, the Assessing Officer is under an obligation to issue notice to the dealer before making the provisional or final assessment orders.

In the instant case, as noted herein before, separate notices were issued to the petitioner on 25-07-2012 under Rules 3 (2) and 4 of the Rules. Though the petitioner has filed objections, no order immediately thereafter was passed till an order was passed on 24-06-2017, which is in the nature of a provisional assessment. Interestingly, respondent No.2 has not referred to the detailed objections filed by the petitioner on 02-06-2016 in reply to the show cause notices, dated 25.07.2012. Thus, the earlier show cause notices issued by respondent No.2 were reduced to an empty formality. In our opinion, non-consideration of the objections filed by the petitioner in the provisional assessment order, dated 24.06.2017, rendered the said Order illegal.

As regards the final assessment order, it is not in dispute that no separate notices were issued as envisaged under Section 8 (3) of the Act read with Rule 4 (2) of the Rules. Interestingly, reference 3 of the Final Assessment Order refers to the purported show cause notice, dated 24-06-2017. It is not disputed by the learned Special Standing Counsel that the said proceeding is nothing but the provisional assessment order as referred to above. It is, therefore, clear from these undisputed facts that, before making the final assessment order, respondent No.2 has not issued show cause notices, but has treated the provisional assessment order as the show cause notice, which clearly indicates a complete non-application of mind on his part in making the final assessment order.

For the aforementioned reasons, both the provisional assessment order as well as the final assessment order are not sustainable in law and they are, accordingly, set aside.

In the result, the Writ Petition is allowed.

As a sequel, WPMP.No.51019 of 2017, filed by the petitioner for interim relief, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

Date: 05-01-2018
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