

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE K.LAKSHMAN**

WP.No. 9277 of 2019

ORDER: *(Per the Hon'ble Sri Justice M.S.Ramachandra Rao)*

1. This Writ Petition is filed by the petitioner assailing the Final Assessment Order passed by the 1st respondent by order No.17125 dt.25.03.2019 for the Tax period 2014-15(CST) under Central Sales Tax Act, 1956 (for short 'the Act').

2. Petitioner was engaged in execution of works contracts and is an assessee on the rolls of the 1st respondent under the provisions of the Telangana VAT Act, 2005 and the Central Sales Tax Act, 1956, and the petitioner has been duly filing monthly returns in Form VAT-200 and Form CST-VI and paying the tax applicable thereon.

3. For the Assessment Year 2014-15, petitioner affected transit sales under Section 6 of the Act amounting to Rs.1,73,56,957/- out of which Rs.73,64,190/- pertains to the transit sales in April 2014, and Rs.99,92,767/- pertains to May, 2014.

4. Petitioner reported transit sales turn over of Rs.1,73,56,957/- and claimed exemption under the VAT Act, as it is relating to turn over assessment under CST Act.

5. But while filing the CST for the month of April, 2014, the turn over figures pertaining to transit sales was inadvertently recorded by the petitioner in the CST returns as

Rs.73,64,19,000/- instead of Rs.73,64,190/-. According to the petitioner by mistake two extra zeros were added in the end.

6. Petitioner contends that this mistake of the petitioner in inadvertently recording the turn over figures pertaining to transit sales for CST returns for April, 2014 is a *bona fide* mistake and was inadvertently done since in the VAT-200 returns filed by the petitioner for April, 2014, the correct figure of Rs.73,64,190/- was disclosed.

7. A show-cause notice dt.28.01.2019 was issued to the petitioner by the 1st respondent proposing to collect a sum of Rs.10,94,54,568/- on the basis of the figure of Rs.73,64,19,000/- pertaining to the transit sales inadvertently mentioned in the CST Returns for April, 2014.

8. Petitioner submitted a reply on 20.03.2019 stating that proposed assessment was not correct and the correct figure of transit sales for April, 2014 and May, 2014 is Rs.1,73,56,957/- and not Rs.75,48,59,095/- as shown in the CST show-cause notice. He also attached abstract of the transit sales and purchases for the year 2014-15 and other documents.

9. Thereafter the impugned Assessment Order was passed on 25.03.2019 rejecting the petitioner's plea about the mistake in the filing of the CST returns in relation to the figures pertaining to transit sales.

10. Challenging the same, this Writ Petition is filed.

11. Counsel for the petitioner contends that adding of two zeros in the end making the figure of Rs.73,64,190/- into Rs.73,64,19,000/- is a *bona fide* mistake and the correct figures have been given by the petitioner in the form VAT-200 and supporting documents have also been placed before the 1st respondent, and the 1st respondent therefore ought not to have confirmed the demand made in the show cause notice.

12. In the counter affidavit filed by the 1st respondent, it is contended that the petitioner has an affective alternative remedy under Section 31 of the Act and can appeal to the statutory appellate authority i.e., Appellate Deputy Commissioner, and the jurisdiction under Article 226 of the Constitution of India cannot be availed of.

13. In the instant case, if the petitioner were to avail the remedy of appeal under the statute, it would have to make mandatory pre-deposit of 12.5% before the appellate Deputy Commissioner; and in the context of the claim of the petitioner that the addition of two zeros in the figures relating to transit sales in the CST return is a *bonafide* mistake, in our considered opinion, the situation does not warrant the petitioner having to comply with the said condition of pre-deposit. Therefore, we are inclined to entertain this Writ Petition under Article 226 of the Constitution of India.

14. The other contention raised in the counter affidavit is that VAT returns are not taken into consideration for finalization of the CST returns and that CST assessment under sub-Rule 5-A of 14 – A of CST (Telangana) Rules, would be applicable, which provides that assessment of tax of a dealer would be passed on the returns filed by him.

15. This plea however would be of no avail in a situation like the present one, when there is a *bonafide* mistake on the part of the petitioner in giving details of the transit sales in the CST returns and it would be unfair to compel the petitioner to suffer the consequences of that *bonafide* mistake on the basis of the above sub-rule.

16. In this regard, it is necessary to refer to sub-Rule 5-A of Rule 14-A of the CST (Telangana) Rules which states as under:

“(5-A) Every dealer shall be deemed to have been assessed to tax, based on returns filed by him, if no assessment is made within a period of four years from the date of filing of the return.”

17. Thus, from the above sub-rule it is clear that if a dealer who had filed a return discovers any error in the returns, he is entitled to file revised returns before an original assessment is made.

18. The Supreme Court in ***Price Waterhouse Coopers Pvt. Ltd. v. Commissioner of Income Tax, Kolkata-I***¹ dealt with a similar situating akin to the present one, where a tax audit report filed

¹ 2012(11) SCC 316

along with the returns contained a computation error in its returns of income tax and the Supreme Court observed that human errors some time occur and merely because an Assessee has not been careful, it does not mean that Assessee is guilty of furnishing inaccurate particulars or attempting to conceal its income. It held:

“17. Having heard learned Counsel for the parties, we are of the view that the facts of the case are rather peculiar and somewhat unique. The Assessee is undoubtedly a reputed firm and has great expertise available with it. Notwithstanding this, it is possible that even the Assessee could make a “silly” mistake and indeed this has been acknowledged both by the Tribunal as well as by the High Court.

18. The fact that the Tax Audit Report was filed along with the return and that it unequivocally stated that the provision for payment was not allowable Under Section 40A(7) of the Act indicates that the Assessee made a computation error in its return of income. Apart from the fact that the Assessee did not notice the error, it was not even noticed even by the Assessing Officer who framed the Assessment order. In that sense, even the Assessing Officer seems to have made a mistake in overlooking the contents of the Tax Audit Report.

19. The contents of the Tax Audit Report suggest that there is no question of the Assessee concealing its income. There is also no question of the Assessee furnishing any inaccurate particulars. It appears to us that all that has happened in the present case is that through a bona fide and inadvertent error, the Assessee while submitting its return, failed to add the provision for gratuity to its total income. This can only be described as a human error which we are all prone to make. The caliber and expertise of the Assessee has little or nothing to do with the inadvertent error. That the Assessee

should have been careful cannot be doubted, but the absence of due care, in a case such as the present, does not mean that the Assessee is guilty of either furnishing inaccurate particulars or attempting to conceal its income.

20. We are of the opinion, given the peculiar facts of the case, that the imposition of penalty on the Assessee is not justified. We are satisfied that the Assessee had committed an inadvertent and bona fide error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars.”

19. Since the error committed by the petitioner became known to the petitioner at the time when the show cause notice dt.28.01.2019 was issued to him by the 1st respondent, and by that date there was no assessment on the original return filed by the petitioner, it was incumbent on the part of the 1st respondent to consider the reply filed by the petitioner to the show cause notice on 20.03.2019 and the supporting material, and treat it as a revised return, since admittedly there is no proforma prescribed for filing of a revised CST return in the Act or the Rules framed there under.

20. Be that as it may, since the impugned assessment order has now been passed, in order to do injustice to the petitioner, we deem it appropriate to set aside the impugned assessment order and permit the petitioner to file a revised CST return in Form CST-6 or through a representation, which shall be treated as revised return, within a period of four (04) weeks from today along with supporting documents. On the filing of such revised return, a fresh assessment order shall be passed by the 1st respondent

without reference to the earlier impugned assessment order dt.25.03.2019 passed by him in order No.17125 for the tax period 2014-15 under the CST Act, 1956. It is also open to the petitioner to raise other grounds available to the petitioner in the revision/revised return being submitted by the petitioner.

21. Consequently, miscellaneous petitions pending if any shall stand dismissed.

M.S. RAMACHANDRA RAO, J

K.LAKSHMAN, J

14th November, 2019.

gra

