

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE KUNURU LAKSHMAN

WRIT PETITION No.18662 OF 2019

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

M/s.Hyderabad Cylinders Private Limited, Hyderabad, the petitioner herein, is aggrieved by the assessment order dated 05.02.2019 passed in relation to the tax period 2015-16 under the Telangana Tax on Entry of Goods into Local Areas Act, 2001. It is significant to note that the petitioner-company filed an appeal against the aforesaid order before the Appellate Deputy Commissioner (CT), Secunderabad Division, Hyderabad, but the said appeal was dismissed on the preliminary ground that the statutory deposit of 12.5% of the disputed amount of tax was not paid within time. The Appellate Deputy Commissioner therefore opined that the delay on the part of the petitioner-company to make such deposit could not be condoned and accordingly dismissed the appeal.

2. The understanding of the Appellate Deputy Commissioner on the issue is incorrect in law in the light of the judgment of the Supreme Court in M/ s.S.E.GRAPHITES PRIVATE LIMITED v. STATE OF TELANGANA¹. Therein, the Supreme Court opined that the decision of the High Court of Andhra Pradesh in ANKAMMA TRADING COMPANY v. APPELLATE DEPUTY COMMISSION (CT), GUNTUR² stood impliedly overruled by the decision of the Supreme Court in M/ s.INNOVATIVES SYSTEMS v. STATE OF ANDHRA PRADESH³. The Supreme Court further observed that the decision in M/ s.INNOVATIVES SYSTEMS³, even if it was brief, laid down the legal position correctly to the effect that once an appeal was filed within the

¹ Civil Appeal No.7574 of 2014 dated 10.07.2019

² (2011) 44 VST 189 (AP)

³ Civil Appeal No.2230/2015 dated 32.02.2015

limitation period but the deposit of 12.5% of the disputed amount of tax, in respect of which the appeal was preferred, is made beyond the limitation prescribed in that regard, the delay in compliance ought to be condoned thereby requiring the appeal to be decided on merits by the appellate authority.

3. In the light of the aforestated settled legal position, it was not proper on the part of the Appellate Deputy Commissioner (CT), Secunderabad Division, Hyderabad, to reject the appeal filed by the petitioner-company on the ground of delayed deposit of 12.5% of the disputed amount of tax. The appellate order dated 30.03.2019 passed by the Appellate Deputy Commissioner (CT), Secunderabad Division, rejecting the petitioner-company's appeal on this ground is accordingly set aside and the said appeal is restored to the file of the said appellate authority. The Appellate Deputy Commissioner shall proceed to hear the appeal on merits. In terms of the direction of the Supreme Court in M/ s.S.E.GRAPHITES PRIVATE LIMITED¹, the Appellate Deputy Commissioner shall dispose of the appeal not later than thirty (30) days from the date of receipt of a copy of this order.

4. The writ petition is accordingly 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.

SANJAY KUMAR, J

KUNURU LAKSHMAN, J

Date:28.08.2019
GJ