THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WP. No. 24298 of 2019

O R D E R: *(Per the Hon'ble Sri Justice M.S.Ramachandra Rao)*

1. This Writ Petition is filed assailing the order dt.03.10.2019 in JC Order No.373 of the 1st respondent confirming the tax proposed on the petitioner under the pre-revision show cause notice issued on 04.09.2017 to the petitioner for the assessment year 2012-13.

2. Petitioner is a partnership firm engaged in the job work of sewing thread and is a registered dealer on the rolls of the 2nd respondent both under the Telangana VAT Act, 2005 (for short 'TVAT Act') and Central Sales Tax Act, 1956 (for short 'the CST Act').

3. For the tax period 2012-13 under the CST Act, the 2nd respondent completed the assessment by proceedings dt.05.10.2015 on a turnover of Rs.44,94,936/- which relates to the job work charges received from the dealers situated outside the State of Telangana, and after due consideration of agreement copies and invoices furnished by the petitioner, granted exemption. This assessment order attained finality.

4. The 1st respondent acting under the revisional power under Section 32(2) of the TVAT Act read with Section 9(2) of the CST Act, proposed to revise the original assessment order passed by the 2nd respondent on 05.10.2015 and issued a pre-revision show cause notice dt.04.09.2017.

5. In the said show cause notice, he proposed to revise the earlier assessment order invoking Section 6A of the CST Act, stating that the burden of proof would be on the dealer to show that the movement of goods was occasioned not by reason of any transaction involving any sale of goods, but by reason of transfer of such goods to any other place of his business or to his agent or principal, as the case may be, and for the said purpose, the dealer should furnish to the Assessing Authority within the prescribed time, a declaration in Form-F. He stated that in the event the petitioner fails to furnish such declaration, by reason of legal fiction, such movement of goods would be deemed for all purposes of the CST Act to have been occasioned as a result of sale.

6. Petitioner requested the 1st respondent through letter dt.06.12.2017 filed on 08.12.2017 seeking two months time for submission of statutory forms, but due to circumstances beyond his control, petitioner could not file the same, since the forms could not be received from the persons who are supposed to issue them to the petitioner. By oversight, the petitioner also did not seek further time.

7. Subsequently, by order dt.03.10.2019 the 1st respondent confirmed the tax proposed in the pre-revision show-cause notice stating that after availing sufficient time, the dealer did not file any submission nor file any letter for adjournment till date.

8. After receiving the order dt.03.10.2019 of the 1st respondent on 15.10.2019, petitioner has filed the instant Writ Petition.

9. Petitioner contends that the 1st respondent ought to have given one more opportunity to it because notice was issued in the year 2017 and the petitioner had sought time in 2017 but the impugned order has been passed on 03.10.2019. It is the contention of the petitioner that the petitioner received 12 numbers of F-Forms from the dealers at Pune, State of Maharashtra on 25.09.2018 after several attempts, and though the date of issue of Forms is 09.05.2017, it covers a turnover of Rs.44,55,085/-. He submits that though he sought to give them to the 1st respondent, but the staff of the 1st respondent did not receive them.

10. Petitioner therefore prays in this Writ Petition for an opportunity to file the said F-Forms which the petitioner had received, by placing reliance on the order dt.09.09.2019 in W.P.No.12443 of 2019. In the said case also, like in the instant case, statutory forms were not available, and they became available subsequent to the passing of the revisional order and this Court gave an opportunity to the petitioner to place the same before the 1st respondent by setting aside the order passed by the revisional authority.

11. Counsel for the petitioner also placed reliance on a Circular dt.31.05.2013 issued by the Commissioner of Commercial Taxes, which explicitly states that dealers should be given two or three opportunities of 10 to 15 days, to file objections and to appear for personal hearing, duly recording the number of opportunities given.

12. In the impugned order passed by the 1st respondent, there is only a reference to the pre-revision show-cause notice dt.04.09.2017 and one opportunity being given to the petitioner on the petitioner's request dt.06.12.2017 for two months. Thereafter, there was no reminder issued to the petitioner.

13. Since substantial liability is sought to be imposed on the petitioner on the turn over of Rs.44,94,936/-, being the job work receipts of the petitioner, and since the petitioner has now available with it 12 F-Forms issued by the dealers at Pune, Maharastra State, which would entitle him to escape the levy of tax, which is now confirmed under the impugned revisional order, in the interest of justice, the said revisional order is liable to be set aside.

14. Accordingly, this Writ Petition is allowed; the impugned revisional order dt.03.10.2019 issued by the 1st respondent in JC order No.373 is set aside; the petitioner is directed to submit the F-Forms available with the petitioner to the 1st respondent within two weeks from date of receipt of this order and on receipt thereof, the 1st respondent is directed to pass a fresh reasoned order in accordance with law, after considering the same, and communicate it to the petitioner. No order as to costs.

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

M.S. RAMACHANDRA RAO, J

T.AMARNATH GOUD, J

27th January, 2020.

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