THE HON'BLE SRI JUSTICE T. VINOD KUMAR
AND
THE HON'BLE SRI JUSTICE PULLA KARTHIK

TAX REVISION CASE Nos.99, 100 AND 175 OF 2003

COMMON ORDER: (per Hon'ble Sri Justice T.Vinod Kumar)

These batch of Tax Revision Cases (TRCs) at the behest of revenue are directed against the order of the Sales Tax Appellate Tribunal, Hyderabad (for short 'the Tribunal) dated 04.12.2002 in T.A. Nos.169 of 1998, 254 of 1998 and 255 of 1998 for the assessment year 1989-90, 1990-91 and 1991-92 under APGST Act, 1957.

2. Since the Petitioner and Respondent-assessee in all the TRCs is one and the same and the issue involved is also common, they are being disposed of by this common order.

3. The Respondent-assessee is a partnership concern registered under Andhra Pradesh General Sales Tax Act, 1957 (for short 'the APGST Act') and Central Sales Tax Act, 1956 (for short 'CST Act') carrying on the business of manufacturing of Mosaic Tiles, Hollow Bricks and also undertaking job work of laying and polishing and mosaic slabs against the material supplied by the customers.

4. During the relevant assessment years, the petitioner claimed exemption on turnover of Rs.11,65,510/- for the assessment year 1989-90, Rs.15,81,065/- for the assessment year 1990-91 and Rs.22,61,382/- for the assessment year 1991-92 received by it as labour charges against the services rendered by it relating to laying of mosaic slab floor at customer location using the material supplied by the customers.

5. The Assessing Authority by taking into account the claim made by the assessee and after considering the details filed and the invoices produced, found that the assessee received the said charges for undertaking job work of laying and polishing of mosaic slab floor at customer location as per the specifications and at the request of the customers and there is no element of sale involved in undertaking such activity.

6. The Deputy Commissioner, in exercise of his revisionary powers, found the said order of assessment to be prejudicial to the interests of revenue and sought to revise the same by proposing to withdraw the exemption allowed and proposed to tax the turnover at 10% treating the same as sale of mosaic tiles.

7. Accordingly, the Deputy Commissioner had issued a show cause notice dated 04.10.1997, which was served on the assessee on 18.10.1997.

8. In response to the said show cause notice, the assessee filed its written objections dated 23.10.1997 on 25.10.1997 contending that the proposed revision of assessment is uncalled for, since the turnover which is proposed to be brought to tax represents collection of job work charges only and does not involve any transfer of property in the said transactions.

9. The said contention of the assessee however, did not find favour with the Revisional Authority, who on the other hand took a view that as the assessee did not produce agreements entered into by it with its customers; that as no documentary evidence is available on the assessment record; and also in the absence of proof of material received, came to the conclusion that the claim of exemption allowed by the Assessing Authority is incorrect and the turnover scored against each of the Assessment year as exempt turnover, is exigible to tax at 4% in terms of G.O.Ms. No.130 dated 14.02.1989.

10. Aggrieved by the said order of the Deputy Commissioner dated 07.11.1997 disallowing the claim of exemption as being

labour charges and subjecting the turnover to tax at 4%, the assessees had preferred appeals before the Tribunal against the order of Revision for all the three years involved i.e., 1989-90, 1990-91 and 1991-92. The assessee had preferred the appeals mainly contending that (i) the revisional orders are barred by limitation; and (ii) that the revisional orders passed by the Deputy Commissioner are not justified and are liable to be set aside.

11. The Tribunal, on the issue of limitation, came to the conclusion that though the revisional orders are passed four days prior to the expiry of limitation, the delay in effecting service of the same on the assessee can be said to be for administrative reasons and accordingly held that the revisional orders of the Deputy Commissioner are not barred by limitation.

12. In so far as the 2nd ground, the Tribunal by taking note of the fact that the Revisional Authority did not afford sufficient time for the assessee to produce the relevant material before passing the impugned order and that the said order having been passed in a hurried manner, recorded finding that the impugned revisional orders were passed without affording reasonable opportunity to the assessee to produce relevant

material in support of its claim for exemption and, therefore, the impugned orders are vitiated on account of violation of principles of natural justice.

13. The Tribunal also recorded its finding that there was no material before the Revisional Authority to come to a different conclusion than what was arrived at by the Assessing Authority, who granted exemption on the disputed turnover. By recording the above said finding, the Tribunal allowed the appeals preferred by the assessee. The Tribunal also recorded its reason for not remanding the matter back to the Revisional Authority on the ground that the assessment order relates to a period as back as ten years and no useful purpose would be served by remanding the matter back to the Revisional Authority at that point of time. In reaching the above conclusion, the Tribunal had placed reliance on the judgment of this Court in **Machilipatnam Central Consumers Co-operative Stores Limited. v. Commissioner of Commercial Taxes, Hyderabad**[1].

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[1] (1988) 71 STC 153

14. Aggrieved by the said order of the Tribunal, the Revenue has preferred these Revisions raising the following questions of law:

i. Whether the revision made by the DC are barred by the period of limitation?
ii. Whether the impugned orders passed by the DC are justified and proper?
iii. Whether the TRIBUNAL justified in allowing the appeal relying upon the Hon'ble A.P. High Court judgment in the case of Machilipatnam Central Consumers Co-op.Stores Ltd. V. Commissioner (CT), Hyderabad: (1988) 71 STC 153?

15. Heard Sri K. Raji Reddy, learned Special Standing Counsel appearing for the Commercial Taxes and Sri G.Narendra Chetty, learned Counsel appearing for the respondent/assessees.

16. Learned Special Standing Counsel would contend that the finding recorded by the Tribunal insofar as the claim of the assessee of its undertaking manufacture of mosaic flooring as per customer requirement by using the raw material supplied as input is not based on any evidence as the respondent/assessee did not produce any agreement to show that it has entered into any agreement with its customer for undertaking such job work, as basis or proof of the customer supplying raw material to the respondent/assessee.

17. Learned Special Standing Counsel would further contend that, since the assessee has manufacturing unit whereat it effects manufacture of mosaic tiles and sale of the same as goods, the claim of exemption on a turnover as representing labour charges for the services rendered by working on the raw material supplied by the customer for manufacture of mosaic tiles cannot be accepted and, therefore, the order of the Tribunal setting aside the Revision order suffers from an error.

18. Sri G. Narendra Chetty, learned Counsel for the Respondent-Assessee on the other hand would contend that the rejection of appeal by the Tribunal on the ground of limitation raised by it with regard to delay in effecting service of the revision order by putting it on the ground of 'Administrative reasons' is not supported by any cogent reasons and thus the revision order is liable to be held as antedated. In support of the above, he placed reliance on judgment of Supreme Court in **State of Andhra Pradesh v. M. Ramakishtaiah & Co.**[2].

19. We have taken note of the respective contentions.

20. Insofar as the first question of law as raised by the revenue in the present revision case is concerned, it is to be

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[2] (1994) 93 STC 406

seen that the said issue has been decided by the Tribunal in favour of the Revenue. As the issue on limitation is decided in favour of the revenue, no revision thereagainst can be maintained by the State. Though we are unable to agree with the reasoning of the Tribunal for rejecting the appeal of the assessee-dealer on the ground of limitation and holding it in favour of the revenue, in view of the decision of this Court in **State of Andhra Pradesh v. Toshiba Anand Batteries Ltd**[3], wherein it has been held that "*the period of limitation of four years prescribed by section 20(3) of the APGST Act covers the whole proceedings of the revision including passing of the final order and of communicating the same promptly to the party concerned.*" However, as the revision is preferred by the State, we refrain from expressing any opinion thereon. Further, it is to be noted that when the revenue is preferring revision, it ought to have verified as to on which issue the Tribunal has held in their favour and on which issue it had held against them in order to seek revision thereagainst.

21. Now turning to the ground of exemption on the turnover representing labour charges for working on the raw material supplied by the customer for laying of mosaic slab flooring, it is

[3] (1995) 96 STC 664

to be noted that at the relevant point of time, mosaic floors are laid in two forms viz., one in the form of sale of tiles of a smaller size, while the other one involved forming of the mosaic floor in large slabs at the customer location covering bigger floor area by undertaking the work at the customer site itself wherein the raw material would be provided by the customer and such flooring is laid as per the specifications and requirements of the customer.

22. Further, it is well known in civil works, of customer providing raw material and only paying labour charges for the services rendered by the contractor. The said fact was taken note of by the Hon'ble Supreme Court in **N.M. Goel & Co. v. Sales Tax Officer, Rajnandgaon**[4] wherein, in a contract for supply of manufacture and supply of electrical poles, the customer chose to supply the required cement in order to ensure quality of the product and the value thereof was deducted from the agreed consideration to be paid. The Hon'ble Supreme Court held that the value of raw material supplied is required to be deducted from the agreed consideration and cannot be subjected to tax in the hands of the contractor.

[4] (1989) 72 STC 368

23. In the facts of the present case, since the Assessing Authority after considering the records produced by the respondent/assessee had recorded a finding that the charges received are only job work charges, the consideration received by it cannot be considered as relating to sale of any goods specified in the schedule to the APGST Act for the respondent authority to levy tax thereon.

24. Further the Tribunal is also justified in holding that there was no material before the Revisional Authority to come to a conclusion that the said charges claimed by the assessee-dealer as representing labour charges for the services rendered by it to come to a different conclusion from that of the conclusion arrived at by the Assessing Authority in order to treat the same as excisable to tax.

25. In view of the conclusions arrived at by us as above, this Court is of the view that no question of law arises from the order of the Tribunal for this Court to exercise jurisdiction under Section 22(1) of the APGST Act.

26. Therefore, these Tax Revision Cases are without any merit and are, accordingly, dismissed.

27. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

T. VINOD KUMAR, J

PULLA KARTHIK, J

Date : 08.11.2022

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