(2014) 09 AP CK 0017

In the Andhra Pradesh High Court

Case No : Writ Petition No. 9533 of 2014

Abad Overseas Private Limited — APPELLANT

Vs

State of Andhra Pradesh — RESPONDENT

Date of Decision : 02-09-2014

Acts Referred:
Andhra Pradesh Value Added Tax Act, 2005 — Section 32

Citation : (2014) 59 APSTJ 76 : (2014) 76 VST 283

Hon'ble Judges : Ramesh Ranganathan, J;M. Satyanarayana Murthy, J

Bench : Division Bench

Advocate : Shaik Jeelani Basha, Advocate for the Appellant; P. Balaji Varma, Special Standing Counsel, Advocate for the Respondent

Judgement

Ramesh Ranganathan, J.—The proceedings of the revisional authority dated February 26, 2014 is questioned in this writ petition as an order passed without jurisdiction and in violation of principles of natural justice. The petitioner is a private limited company engaged in the business of purchase and sale of goods. Its registered office is at Kerala, and it has branches in Tamil Nadu and at Visakhapatnam in the State of Andhra Pradesh. The Deputy Commercial Tax Officer, Kurupam, passed an assessment order on May 16, 2013 for the tax period January 1, 2009 to March 31, 2013. The second respondent exercised his power of revision under section 32 of the Andhra Pradesh Value Added Tax Act, 2005 (for brevity, "the Act") seeking to bring a turnover of Rs. 1,92,55,409 and Rs. 10,62,870, for the years 2009-10 and 2010-11, respectively, to tax as sale of raw material which was not disclosed as net turnover. The revisional authority proposed to levy tax at a higher rate of 14.5 per cent holding that loss had resulted to the State exchequer. The petitioner was asked to show cause why the sales of raw material should not be brought to tax under the Act. In reply thereto the petitioner, by their letter dated November 6, 2013, stated that raw material sales mentioned in the notice included both at their Visakhapatnam and Chennai branches; raw fish was procured from catches by fishing boats from the ocean and sea catches; they were auctioned at the designated harbour, through a process of bidding and auction; the goods were sold to the highest bidder in the auction, and delivered on the same day at the harbour itself; and what the petitioner had procured and sold was fresh fish in the sea which was exempt under entry 24 of the First Schedule to the Act. Along with their reply, the petitioner submitted copies of sales ledgers for the years 2009-10 and 2010-11; and the copies of invoices. In their reply affidavit filed before this court the petitioner asserts that they had received payment from buyers, i.e., M/s. Cap Sea Foods Private Limited and Abad Fisheries Private Limited towards sale consideration by way of cheques.

2. The revisional authority held that the documents submitted by the petitioner were not convincing as there was no supply order placed by the supplier; details of payment, made by the purchaser, were not placed before him; the dealer could not explain, in their reply, how fresh fish were transported all the way to Kochi, as it was perishable in nature; if fresh fish had been sold, the dealer could have reported such sale in their returns or brought the information to the notice of the assessing authority before the assessment was finalized; it was only to evade tax that they had fabricated documents, and had contended that they had effected sales of exempted goods, i.e., fresh fish; and no evidence had been filed to show that the petitioner had procured fresh fish at the harbour by bidding auction, and had sold the fish at the highest bid.

3. All that the revisional show-cause notice records is that sales of raw material were not brought under the net turnover. In reply thereto the petitioner stated that they had sold raw fish purchased at the harbour. They placed copies of the invoices and their ledger before the revisional authority. If the second respondent was of the view that the information provided by the petitioner was insufficient, and information regarding the amounts received on the sale of fish should have been placed before him, nothing prevented him from seeking such information. The petitioner has not been given an opportunity of being heard, as he has not been informed of the nature of information which the second respondent considered necessary to examine the petitioner''s plea that they had only sold raw fish which is exempt from tax under entry 24 of the First Schedule to the Act. The impugned assessment order is in violation of the principles of natural justice and is, accordingly, set aside. Needless to state that this order shall not preclude the second respondent from calling for such information, as he considers necessary, from the petitioner; and thereafter pass an order afresh in accordance with law. The writ petition is, accordingly, disposed of. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

