

(2011) 01 AP CK 0075

In the Andhra Pradesh High Court

Case No : Writ Petition No. 31818 of 2010

Agarwal Industries (P) Ltd. and Another

APPELLANT

Vs

Appellate Deputy Commissioner (CT) and Others

RESPONDENT

Date of Decision : 25-01-2011

Acts Referred:

Andhra Pradesh Value Added Tax Act, 2005 — Section 31, 31(1), 53(3)
Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 14(2), 29(2)

Citation : (2011) 44 VST 353

Hon'ble Judges : V.V.S. Rao, J;Ramesh Ranganathan, J

Bench : Division Bench

Advocate : S.R.R. Viswanath, for the Appellant; P. Balaji Varma, Special Standing Counsel for Commercial tax, for the Respondent

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, J.—The order impugned in this writ petition dated October 11, 2010, was passed by the first respondent. Thereby the petitioner's appeal, u/s 31 of the Andhra Pradesh Value Added Tax Act, 2005, was rejected on the ground that the said appeal, filed with a delay of 528 days, could not be admitted. Facts in brief are that the petitioner, a company registered under the Companies Act, is engaged in the manufacture and sale of edible oils. It is registered under the Andhra Pradesh Value Added Tax Act, 2005 (hereinafter called "VAT Act"), and the Central Sales Tax Act, 1956. The third respondent passed an order of assessment in form VAT 305 dated November 22, 2008. Aggrieved thereby, the petitioner preferred an appeal to the first respondent on January 8, 2009, which was dismissed by order dated July 18, 2009. The petitioner, thereafter, preferred a second appeal to the Sales Tax Appellate Tribunal (the STAT) on August 3, 2009. The said appeal is said to be still pending before the STAT.

2. The third respondent issued a notice in form VAT 203A dated December 4,

2008, proposing to levy penalty u/s 53(3) of the VAT Act. After examining the petitioner's objections thereto, the proposed penalty of Rs. 20,76,106 was confirmed by order dated January 29, 2009, which was served on the petitioner on February 4, 2009. Aggrieved thereby, the petitioner filed W. P. No. 2653 of 2009 on February 10, 2009 (Agarwal Industries Pvt. Ltd. v. Commercial Tax Officer). The operative portion of the order passed on July 20, 2009, whereby the said writ petition was dismissed, reads as under:

In view of the binding judgment of the three-judge Bench in C. A. Abraham, we are not inclined to go into the merits of the case. Whether the petitioner under-declared the tax and/or whether the petitioner claimed excess/over input-tax credit for gaining the benefit of "tax under-declared", are the matters to be agitated before appropriate appellate/revisional forum. The writ petition straightaway cannot be entertained.

3. The petitioner, thereafter, filed an appeal before the first respondent on August 16, 2010, contending that they had filed W. P. No. 2653 of 2009 within six days of receipt of the order of penalty dated January 29, 2009, and the impugned appeal within 26 days of the order passed by the High Court on July 20, 2009, dismissing the writ petition; and if the period, during which the writ petition was pending on the file of the High Court, was excluded the appeal filed on August 16, 2010 was within the time stipulated u/s 31(1) of the VAT Act and the first proviso thereto. The first respondent, however, rejected the petitioner's contention holding that, in the light of the judgment of this court in A.V.U. Engineers (P) Ltd. Vs. Appellate Deputy Commissioner (CT), Hyderabad Rural Division and Another, and the order of the STAT in T. A. No. 125 of 2002 dated July 4, 2008, which had relied on the judgment of the Supreme Court in The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur, , he had no power to condone the delay beyond 60 days whereas, in the present case, the appeal was preferred with a delay of 528 days. It is this order of the first respondent dated October 11, 2010, which is under challenge in this writ petition.

4. Dr. S.R.R. Viswanath, the learned counsel for the petitioner, would submit that, as this court had dismissed W. P. No. 2653 of 2009 on July 20, 2010, on the ground that the petitioner had an alternative remedy, the appellate authority under the VAT Act had, necessarily, to condone the delay and entertain the appeal; as the petitioner has a substantive right of appeal against an order of penalty, such a right must have a remedy on the principle of *ubi jus ibi remedium*; the period, during which W. P. No. 2653 of 2009 was pending before this court, must be excluded on the principle of *actus curiae neminem gravabit*, i.e., the act of the court shall prejudice no one; and the doctrine of precedence of substantive rights over procedural law would require the appeal being entertained. The learned counsel would rely on S. Amarjit Singh Kalra (dead) by Lrs. and Others and Smt. Ram Piari (dead) by L.Rs. and Others Vs. Smt. Pramod Gupta (dead) by Lrs. and Others, and Sunder Theatres (Nandani Talkies), Civil

Lines, Jhansi Vs. Allahabad Bank, Branch Civil Lines, Jhansi,

5. Section 31(1) of the VAT Act enables a VAT dealer to prefer an appeal, against an order of assessment, within thirty days of the order or proceedings being served on him. Under the first proviso thereto, the appellate authority has been conferred the discretion to admit an appeal, preferred within a period of thirty days after the period of thirty days prescribed for filing the appeal u/s 31(1) of the VAT Act, if sufficient cause is shown for not filing the appeal within the time prescribed. The discretion conferred on the appellate authority to entertain an appeal, even in cases where sufficient cause is shown for the delay, is only for a period of thirty days after the original period of thirty days, as stipulated u/s 31(1) of the VAT Act, and not beyond.

6. If the Legislature, in a special statute, prescribes a certain period of limitation for filing a particular application thereunder, and provides in clear terms that such a period, on sufficient cause being shown, may be extended in the maximum only up to a specified time-limit and no further, then the Tribunal concerned has no jurisdiction to treat as within limitation an application filed before it beyond such maximum time-limit specified in the statute, by excluding the time spent in prosecuting in good faith and due diligence any prior proceeding on the analogy of section 14(2) of the Limitation Act. The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur,

7. It is true that, in Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker, , the Supreme Court distinguished its earlier judgment in The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur, on the ground that the scope of section 29(2) of the Limitation Act was not considered in the said decision and, as such, could not be held to be an authority for the proposition that, in revisional proceedings before the sales tax authorities functioning under the U.P. Sales Tax Act, section 29(2) cannot apply. Both the judgments of the Supreme Court, in The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur, and Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker, were considered by the Division Bench of this court, in A.V.U. Engineers (P) Ltd. Vs. Appellate Deputy Commissioner (CT), Hyderabad Rural Division and Another, , while interpreting the scope of the amended first proviso to section 19(1) of the APGST Act which is in pari materia with section 31(1) of the VAT Act. The first proviso to section 19(1), after its amendment by A. P. Act 8 of 1997, enabled the appellate authority to admit an appeal after the period of 30 days if he was satisfied that the dealer had sufficient cause for not preferring the appeal within that period. Prior to its amendment, by A.P. Act 8 of 1997, the proviso to section 19(1) provided that the appellate authority may admit an appeal preferred after the period of thirty prescribed in section 19(1), if he was satisfied that the dealer had sufficient cause for not preferring the appeal within that period. The words "within a further period of thirty days" was inserted to the proviso on its amendment by A. P. Act 8 of 1997. As a result the appellate authority could, within a further period of 30 days, admit the appeal preferred

after the period of 30 days if he was satisfied that the dealer had sufficient cause for not preferring the appeal within that period. While considering the amended first proviso to section 19(1) of the APGST Act, the Division Bench of this court, in *A.V.U. Engineers (P) Ltd. Vs. Appellate Deputy Commissioner (CT), Hyderabad Rural Division and Another*,

A perusal of the above clearly shows that prior to the amended proviso, inserted by Act 8 of 1997, the appellate authority was given unlimited discretion to condone the delay, if he is satisfied that the dealer had sufficient cause for not preferring the appeal within a period of thirty days. But this unlimited discretionary power conferred on the appellate authority was restricted, confining such power to condone the delay up to a maximum period of thirty days by Act 8 of 1997. Even in such case, the appellate authority is entitled to admit the appeal if he is satisfied that the dealer had sufficient cause for not preferring the appeal within the prescribed limit. Even if the appellate authority is satisfied that the dealer was prevented for sufficient cause, it has no power to condone the delay beyond the period of thirty days....

...From the provisions existing prior to the enactment and after the enactment of the Amendment Act, it is clear that the Legislature had intentionally brought the new provisions so as to curtail the unlimited discretionary powers of the appellate authority to condone the delay.

In the light of the above position, if the provisions of the Limitation Act are made applicable by virtue of section 29(2), the result would be that the provisions of the Amendment Act would become otiose and the old position would be restored, restoring the unlimited discretionary powers of the appellate authority. We do not think that the courts are empowered to create such a situation, especially when the constitutionality of the amended provisions in question are already upheld by this court.

....

If we examine the relevant provisions of the Act, in the light of the decisions referred to earlier, though the provisions of the Act do not contain any express words excluding the applicability of the provisions of the Limitation Act, but it has to be considered in the light of the scheme of the Act. First of all, the Andhra Pradesh General Sales Tax Act, 1957 is a self-contained code providing remedies for all possible contingencies that would arise in the administration of the provisions of the said Act, viz., the Act provides to enforce the rights, forum is provided, procedure is prescribed, remedies including appeals and revisions are provided, penalties are indicated for non-compliance of the provisions as well as the orders passed under the provisions of the Act. Further period of limitation is also specifically prescribed for filing of the returns, appeals, revisions, etc. Further, the very object of enactment of the Amendment Act is to curtail the discretionary powers vested in the appellate authorities as per the existing provisions. Prior to the Amendment Act, both the first appellate authority as well

as the second appellate authority were having unlimited discretionary power to condone the delay, if the authorities satisfied that the dealer was prevented from presenting the appeal within the time prescribed. The Legislature noted that the said unlimited discretionary powers conferred on the authorities had resulted in prolonged litigation thereby affecting the collection of the revenue to the State. In the light of the state of affairs, in order to streamline and simplify the filing and disposal of the appeals before the appellate authorities, the Amendment Act has been brought into existence, under which the unlimited discretionary power vested in the appellate authorities were curtailed and such power of condonation of delay is restricted to a period not exceeding thirty days in the case of the first appellate authority, and not exceeding sixty days in the case of the second appellate authority (Tribunal) if satisfied that the dealer had sufficient cause for not preferring the appeal within the period....

(emphasis supplied)

8. When a statute is repealed and re-enacted, and words in the repealed statute are reproduced in the new statute, they should be interpreted in the sense which had been judicially put on them under the repealed Act, because the Legislature is presumed to be acquainted with the construction which the courts have put upon the words and, when they repeat the same words, they must be taken to have accepted the interpretation put on them by the court as correctly reflecting the legislative mind. *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, Where a word or phrase has received clear judicial interpretation the subsequent statute which incorporates the same word or the same phrase in a similar context, must be construed so that the word or phrase is interpreted according to the meaning that has been previously assigned to it. (*Banarasi Devi Vs. Income Tax Officer, Calcutta*, ; [1964] 7 SCR 539 and *Diwan Bros. Vs. Central Bank of India, Bombay and Others*, If the Legislature, which is deemed to be aware of the declarations of law by the court, did not alter the law, it must be deemed to have accepted the interpretation of the court. (*Sakal Deep Sahai Srivastava Vs. Union of India (UOI) and Another*, As noted hereinabove, the first proviso to section 31(1) of the VAT Act is in pari materia with the first proviso to section 19(1) of the APGST Act. That the Legislature, even after repeal of the APGST Act, has chosen to restrict the power of the appellate authority to condone the delay in preferring the appeal only to 30 days, under the first proviso to section 31(1) of the VAT Act, (as was prescribed under the repealed first proviso to section 19(1) of the APGST Act) would, necessarily, mean that the construction placed on the first proviso to section 19(1) of the APGST Act by the Division Bench of this court, in *A.V.U. Engineers (P) Ltd. Vs. Appellate Deputy Commissioner (CT), Hyderabad Rural Division and Another*, would equally apply in interpreting the first proviso to section 31(1) of the VAT Act. Consequently, even under the first proviso to section 31(1) of the VAT Act, the appellate authority would not have the power to condone the delay in preferring the appeal beyond a period of 60 days (30+30 days).

9. A right of appeal is a creature of a statute. It is not an inherent right. The Legislature, while granting a right of appeal, can impose conditions for the exercise of such right. *The Anant Mills Co. Ltd. Vs. State of Gujarat and Others*, . It is permissible to enact a law to the effect that no appeal shall lie against an order relating to an assessment to tax unless tax has been paid. The Legislature in its wisdom may impose accompanying liability upon a party upon whom a legal right of appeal is conferred or to prescribe conditions for the exercise of the rights. *Sujana Metal Products Limited and Another Vs. State of Andhra Pradesh and Others*, , *The Anant Mills Co. Ltd. Vs. State of Gujarat and Others*, . Whenever such limitations are imposed, they are to be strictly followed. *Raj Kumar Shivhare Vs. Assistant Director, Directorate of Enforcement and Another*, . Section 31(1) of the VAT Act, and its first proviso, prescribe a maximum period of 60 days (30+30) for an appeal to be entertained by the appellate authority, and not beyond. As the right of appeal conferred by the VAT Act is subject to the restrictions prescribed therein, and as the delay in the present case of 528 days is far in excess of the maximum period of 60 days within which alone can the appellate authority entertain an appeal u/s 31(1), the principle of *ubi jus ibi remedium* has no application. A substantive right of appeal is circumscribed by the restrictions stipulated in the statute for such an appeal to be entertained and, as such., the doctrine of precedence of substantive rights over procedural law has also no application.

10. W.P. No. 2653 of 2009 dated July 20, 2010 was not even entertained by this court, and was dismissed at the stage of admission. The mere fact that the said writ petition filed by the petitioner was pending admission for some time does not confer on him any right to claim exclusion of the period, during which the writ petition was pending admission before this court, in computing the period of limitation for preferring an appeal u/s 31(1) of the VAT Act.

11. It is no doubt true that as far as possible, courts must always aim to preserve and protect the rights of parties and extend help to enforce them rather than deny relief, and thereby render the rights themselves otiose. *S. Amarjit Singh Kalra (dead) by Lrs. and Others and Smt. Ram Piari (dead) by L.Rs. and Others Vs. Smt. Pramod Gupta (dead) by Lrs. and Others*, . It must, however, be borne in mind that the period of limitation prescribed by a statute would not, ordinarily, be extended by the High Court in exercise of its jurisdiction under article 226 of the Constitution of India. In any event this court, while dismissing W. P. No. 2653 of 2009 by its order dated July 20, 2010, on the ground that, where an alternative remedy exists, the writ petition cannot be entertained, did not issue any directions to the first respondent to entertain the appeal excluding the period during which the writ petition was pending admission before this court. An order of a Division Bench of the High Court under article 226 of the Constitution of India can be corrected only by way of an appeal to the Supreme Court, or by way of a review, and not in collateral proceedings in a subsequent writ petition before a co-ordinate Bench of the High Court. It would be wholly improper for a co-ordinate Bench to sit in judgment over the order passed in the

said writ petition, and extend the time for preferring the appeal. A writ of certiorari cannot be issued to co-ordinate courts. One Bench of a High Court cannot issue a writ to a different Bench of the same High Court. Rupa Ashok Hurra Vs. Ashok Hurra and Another,

12. In *Sunder Theatres (Nandani Talkies), Civil Lines, Jhansi Vs. Allahabad Bank, Branch Civil Lines, Jhansi*, a single judge of the Allahabad High Court, in exercise of his discretion u/s 115 of the Code of Civil Procedure, condoned the delay in filing the revision application. It is not every observation, but only the ratio, in a judgment of another High Court which is of persuasive value. Reliance placed by the learned counsel on *Sunder Theatres (Nandani Talkies), Civil Lines, Jhansi Vs. Allahabad Bank, Branch Civil Lines, Jhansi*, is, therefore, misplaced. Viewed from any angle, the writ petition fails and is, accordingly, dismissed. However, in the circumstances, without costs.