(2013) 12 AP CK 0096

In the Andhra Pradesh High Court

Case No : W.P. No. 33758 of 2013

Bartronics India Limited — APPELLANT

Vs

Commercial Tax Officer and Another — RESPONDENT

Date of Decision : 16-12-2013

Acts Referred:

Citation : (2014) 58 APSTJ 47

Judgement

G. Rohini, J.—This writ petition is filed seeking a declaration that the order dated 30.03.2013 passed by the 1st respondent - Commercial Tax Officer as revised by the subsequent order dated 24.09.2013 under the provisions of the Central Sales Tax Act, 1956 (for short "the C.S.T. Act") is arbitrary and illegal. We have heard the learned counsel for the petitioner as well as the learned Senior Standing Counsel for Commercial Taxes appearing for the respondents.

2. The petitioner company, which is carrying on business in manufacture and sale of SIM cards and Smart Cards and development of Software and trading in Computer hardware items, is a registered dealer under the provisions of A.P. General Sales Tax Act, 1957 and C.S.T. Act, 1956.

3. For the Assessment Year 2009-2010 the petitioner filed its monthly returns under the C.S.T. Act claiming concessional rate of tax on Inter-State sales of SIM cards and Smart Cards against furnishing declarations in Form-C. The petitioner also claimed exemption u/s 5(1) on export sale of electronic goods, printers, etc., as well as exemption u/s 6(2) on high sea sales and thus paid the applicable tax.

4. However the 1st respondent issued show-cause notice dated 7.2.2013 proposing to assess the petitioner on a turnover of Rs. 435,24,15,495/- treating the transactions as Inter-State sales not covered by statutory forms and granting seven (7) days time to file their objections in writing. The petitioner was also called upon to furnish the copy of annual report along with bill-wise statement and Inter-State sales, stock transfer, deemed/direct export sales, high sea sales, consignment sales statements.

5. In response to the said notice, the petitioner by letter dated 12.03.2013 furnished a copy of the statement showing the details of the export and high sea sales bill-wise statement and the statement showing the bill-wise details of Inter-State sales. The petitioner had also filed 20 C-Forms in original worth Rs. 52,80,89,645/- and requested the 1st respondent to consider the same. Thereafter, the 1st respondent by order dated 30.03.2013 determined the tax liability of the petitioner after granting relief of concessional rate in respect of the turnover covered by C-Forms and confirming the levy on the balance turnover.

6. Subsequently, the petitioner produced some more C-Forms for a further turnover of Rs. 71,82,133/- along with its letter dated 18.04.2013 and requested the 1 respondent to consider the same and pass a revised order in terms of Rule 12(7) of the Central Sales Tax (Registration and Turnover) Rules, 1957. It is claimed that along with the said letter, the petitioner filed material in support of the claim of exemption with regard to export sales and high sea sales. The petitioner also requested the 1st respondent to provide an opportunity of personal hearing before passing the revised order.

7. In pursuance thereof, the 1st respondent passed the order dated 24.09.2013 granting further relief in respect of Inter-State sales covered by Form-C declarations produced by the petitioner covering turnover of Rs. 70,41,307/- and assessing the petitioner on the balance turnover.

8. Aggrieved by the same, the present writ petition is filed contending inter alia that the said order is in violation of the principles of natural justice since in spite of a specific request made for providing an opportunity of personal hearing the 1st respondent passed the impugned revised order without providing such an opportunity to the petitioner.

9. Reiterating the submissions in the writ petition, it is contended by the learned counsel for the petitioner that had an opportunity of personal hearing been given, the petitioner would have established that there is documentary evidence covering the entire disputed turnover. Thus it is submitted that the impugned order may be set aside and the matter may be remitted back to the 1st respondent for passing an appropriate order afresh.

10. On the other hand, it is contended by the learned Special Standing Counsel for Commercial Taxes that Rule 12(7) of Central Sales Tax (Registration and Turnover) Rules, 1957 is merely a provision which entitles the dealer to submit the statutory declarations and to seek rectification and in fact the petitioner in his application dated 18.04.2013 had only sought for such rectification of the assessment already made and therefore the question of providing personal hearing before passing the impugned order does not arise at all.

11. However, placing reliance upon Sri Venkataramana Manure Company Vs. The Deputy Commissioner of Commercial Taxes and Others, , it is submitted by the learned counsel for the petitioner that in appropriate cases the opportunity of personal hearing has to be provided even in the absence of a specific request for

such opportunity.

12. The learned counsel for the petitioner has also relied upon Godrej Agrovet Ltd. v. Commercial Tax Officer, Eluru (2007) 7 VST 730 in support of his submission that the proviso to Rule 12(7) of the C.S.T. (R. & T.) Rules, 1957, enables the petitioner to produce the C-Forms even after making of the assessment order, and therefore the contention of the respondents that the impugned order is only a rectification order is untenable.

13. Having given our thoughtful consideration to the rival submissions, particularly in view of the fact that the matter involves disputed questions of fact, it appears to us that the 1st respondent ought to have given an opportunity of personal hearing to the petitioner before passing the impugned order.

14. However, it may be added that the matter cannot be reopened in its entirety, but the petitioner is entitled to an opportunity to make his submissions only with regard to declarations in Form-C or Form-F or the certificates in Form-E I or Form-E II as provided under Rule 12(7) of the Central Sales Tax (R. & T.) Rules, 1957.

15. Accordingly, the impugned order is hereby set aside and the Writ Petition is disposed of with a direction to the respondent No. 1 to give an opportunity of personal hearing as indicated above and pass an appropriate order afresh in accordance with law. No costs. Consequently the miscellaneous petitions if any pending in the writ petition shall stand closed.