
(2014) 02 AP CK 0175

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12078 of 2013

Bhanu Enterprises

APPELLANT

Vs

Commercial Tax Officer

RESPONDENT

Date of Decision : 21-02-2014

Acts Referred:

Andhra Pradesh Value Added Tax Act, 2005 — Section 31
Constitution of India, 1950 — Article 226

Citation : (2014) 58 APSTJ 54

Hon'ble Judges : M. Satyanarayana Murthy, J; Ashutosh Mohunta, J

Bench : Division Bench

Advocate : K. Raji Reddy, Advocate for the Appellant; P. Balaji Verma, Special Standing Counsel, Advocate for the Respondent

Judgement

M. Satyanarayana Murthy, J.—This petition is filed under Article 226 of Constitution of India to issue a Writ of Mandamus declaring the assessment order dated 21-03-2013 passed by the respondent, without furnishing the documents on which he is relying on, as illegal, arbitrary and in violation of principles of natural justice and contrary to the decision of this Court reported in 54 APSTJ 51.

It is alleged that the petitioner is a registered VAT dealer and an assessee on the rolls of Commercial Tax Officer, Nandigama Circle, Bhavanipuram, Vijayawada. The petitioner is carrying on his business of dalls and pulses and also acting as a commission agent filing monthly returns in Form VAT 200 and paying tax due thereon before concerned territorial C.T.O. While the matter stood thus, the Deputy Commissioner (CT), No. I Division, Vijayawada, got inspected the pulses broker's office in Vijayawada, recovered certain information relating to the purchase of pulses by various dealers in Vijayawada from Maharashtra State and furnished the same to the concerned officers of the department. Basing on the above information collected by Deputy Commissioner (CT), the respondent was issued authorization for inspection of business premises of various dealers for the purpose of cross verification of outside state purchases of pulses with reference

to the account books maintained by the dealers and turnovers disclosed by them to the department. In support of the authorization issued by the Deputy Commissioner (CT), Division-I, Vijayawada, the respondent inspected the business premises of the petitioner on 23-06-2011, conducted specific audit of the petitioner's accounts with reference to turnover disclosed in Form VAT 200 returns and also outside state purchase details supplied to him by Deputy Commissioner (CT) referred above and after audit, the respondent came to conclusion that on the basis of information regarding purchase of pulses by dealers in Vijayawada from Maharashtra State, the petitioner failed to account for the outside state purchases to a tune of Rs. 76,94,211/- for the year 2009-10 and Rs. 2,84,550/- for the year 2011-12. It is also further alleged that the petitioner failed to account for the outside state purchases to a tune of Rs. 1,90,77,025/- for the year 2010-11, issued notice in Form VAT 305-A on 11-07-2011 proposing to levy tax on the estimated sale value relating to the outside state purchases amounting to a tax of Rs. 12,30,846/-.

On receipt of notice in Form VAT 305-A dated 11-07-2011, the petitioner filed objections. The respondent again issued a revised show-cause notice in Form VAT 305-A on 06-08-2011 proposing to levy tax on the very same turnover and tax that was proposed in the show-cause notice dated 11-07-2011. Again, objections on 29-11-2011 were filed denying the alleged outside state purchases and contending that pulses being sensitive goods, the petitioner is obliged to issue advanced CST waybills to accompany the goods from other states as per the notification issued by the Commissioner of Commercial Taxes under Rule 55(2) of APVAT Rules vide notification No. JC(CT)(Enf)/D2/723/05, dated 15-06-2005. It is further contended that the Writ Petitioner maintained proper accounts disclosing the purchases and requested the respondent to supply copies of invoices pertaining to outside state purchases and other relevant documents. The respondent, instead of furnishing the required information sought for by the petitioner, issued another show-cause notice on 02-02-2012 proposing to levy tax of Rs. 12,30,846/- and also proposing to levy further tax of Rs. 24,64,345/- on the ground that verification of the bank account statement bearing No. 910020045538858 with Axis Bank maintained by Sri T. Bhanu Kumar (HUF), husband of the Writ Petitioner, revealed that Bhanu Kumar paid an amount of Rs. 3,12,92,661/- in the year 2010-11 and Rs. 2,47,15,169/- in the year 2011-12 to various outside state sellers either by cheque or by cash payment. The said payments have nothing to do with the business of the Writ Petitioner and thereby, the levy of proposed tax of Rs. 24,64,345/- and Rs. 12,30,846/- is illegal. Again, the petitioner submitted objections to the show-cause notice dated 02-02-2012 reiterating the earlier contentions. Again, the respondent issued another notice on 10-09-2012 and the Writ Petitioner submitted his objections on 26-10-2012 reiterating various contentions. However, finally, the respondent passed an order levying tax of Rs. 35,76,171/- by assessment order dated 21-03-2013. The said order is arbitrary and illegal.

Though appeal lies against the assessment order to the Appellate Deputy

Commissioner, it is not an efficacious remedy since the order was passed without furnishing the information sought for by the petitioner and it is against the judgment of this Court reported in 54 APSTJ 51 and also the unreported decision of this Court in W.P. No. 5291 of 2012 dated 02-03-2012.

The respondent filed counter denying material allegations of the Writ Petition while admitting issue of show-cause notices on different dates on the basis of information collected from various commission agents, Vijayawada, and on audit of accounts of the petitioner and other dealers regarding outside state purchases. The petitioner also furnished him information in a show-cause notice, which is the basis for assessment, and no further information is required to be furnished and in fact, the respondent issued notice on 14-12-2011 requesting the petitioner to obtain required copies but no copies were obtained and without obtaining copies of the required information and without preferring an appeal, the present Writ Petition is filed and that the order passed by the respondent is totally in accordance with law and based on the information already disclosed in the show-cause notice. Thereby, the Writ Petition is not maintainable as efficacious and alternative statutory remedy is available i.e. an appeal to the Deputy Appellate Commissioner and prayed for dismissal of the petition.

2. During the course of argument, learned counsel for the petitioner would contend that time-and-again for all the show-cause notices referred above, objections were filed calling upon the respondent to furnish documents and other information on which the respondent relied upon for assessing tax but no such information was furnished and on the other hand, proceeded to levy tax against the petitioner and the procedure adopted by the respondent is totally in utter disregard and violation of principles of natural justice and placed reliance on the judgment of this Court reported in 54 APSTJ 51 and also the unreported decision of this Court in W.P. No. 5291 of 2012 dated 02-03-2012 whereas learned counsel for the respondent argued totally in support of the order passed by the respondent.

3. In view of the contentions raised by both the counsel, the points that arise for consideration are as follows:

"(1) Whether the impugned assessment order dated 21-03-2013 is passed without furnishing required information and documents, if so, it amounts to violation of principles of natural justice and liable to be set aside?

(2) Whether the Writ Petition is maintainable when a statutory appeal, which is an effective and efficacious remedy, is available to the Writ Petitioner?"

4. In Re. Point No. 1:

Admittedly, the petitioner, being the VAT dealer, was assessed for the relevant years but the Deputy Commissioner (CT) collected certain information from various commission agents at Vijayawada and furnished the same to the respondent for inspection of the premises of the Writ Petitioner and others for

cross verification of the outside state purchases and during audit of accounts, the respondent found that certain interstate purchases were not accounted for and furnished the details in the show-cause notice, including date of purchase, value of purchase and dealer's name.

5. In notice dated 21-03-2012, the total outside state purchases for the year 2009-10 were 44 in number for Rs. 1,90,77,025/-, for the year 2011-12 outside state purchases was only Rs. 2,84,550/-, unaccounted purchases for the year 2010-11 on various dates is amounting to Rs. 2,47,15,169/- and proposed to levy tax for the years 2009-10, 2010-11 and 2011-12 is Rs. 35,76,171/- but in the similar notice dated 10-09-2012, the total purchases for the year 2009-10 was only Rs. 76,94,211/-, Rs. 90,77,025/- for the year 2010-11 and Rs. 2,84,550/- for the year 2011-12. Likewise, in each show-cause notice, different details were shown. Thus, in view of the variation from notice to notice, there is any amount of doubt about actual purchases outside the state. In fact, the Writ Petitioner sought for furnishing copies of invoices and other relevant information from the respondent but obviously for different reasons, the respondent did not supply the information and, on the other hand, issued a notice to obtain copies. This procedure adopted by the respondent in levying tax without furnishing copies of invoices and other material on which assessment was made is against the principles of natural justice. In *Sri Uma Maheshwara Rice & Flour Mill, Vetlapalem v. Commercial Tax Officer, Peddapuram*, (2012) 54 APSTJ 51, in similar circumstances, the order was declared as arbitrary on the ground that the impugned assessment order was passed without furnishing information sought for. A Division Bench of this Court had an occasion to deal with a similar situation in *M/s. Rajeswari Dall Mill, Kirshna District, v. CTO., Vijayawada W.P. No. 5291 OF 2012*, wherein it was directed to set aside the assessment order giving liberty to the respondent to pass a fresh order of assessment after following due process of law and furnishing of relevant material on the basis of which the revised order of assessment was proposed and passed. In the instant case on hand, in view of variation in each show-cause notice in the details furnished by the respondent, it is difficult to conclude that the respondent assessed tax basing on the information furnished to the petitioner. In fact, the respondent, though disclosed details of purchases from various dealers outside the state, did not furnish copies of invoices on which the respondent relied on. Therefore, passing the assessment order without furnishing the information sought for by the Writ Petitioner is nothing but denial of sufficient opportunity to the Writ Petitioner and it is against the principles of natural justice. Therefore, this Court, without any hesitation, can follow the same procedure followed in *M/s. Rajeswari Dall Mill (supra)* and *Sri Uma Maheswara Rice & Flour Mill (supra)* in setting aside the impugned assessment order dated 21-03-2013 declaring it as arbitrary. However, the respondent is at liberty to pass order of assessment afresh after following due process of law and furnishing all the relevant materials on the basis of which the revised order of assessment is proposed. Accordingly, the point is held in favour of the petitioner and against the respondent.

6. In Re. Point No. 2: According to the contentions of the respondent, an efficacious alternative statutory remedy is available by way of appeal to the petitioner and without exhausting statutory remedy by way of appeal, the Writ Petitioner cannot approach this Court claiming relief under Article 226 of Constitution of India. No doubt, a remedy by way of appeal is available under statute but when the assessment order is passed against principles of natural justice, the petitioner certainly can invoke the jurisdiction of this Court under Article 226 of Constitution of India since the bar is not the absolute bar in view of the principle laid down in 2009 (14) SCC 239. In Commissioner of Income Tax and Others Vs. Chhabil Dass Agarwal, , the Apex Court held that:

"Non-entertainment of petitions under Writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. It is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy, however, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226. However, when a statutory forum is created by law for redressal of grievances, a Writ Petition should not be entertained ignoring the statutory dispensation. In the instant case, the Act provides complete machinery for the assessment/re-assessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the Assessee could not be permitted to invoke the Writ jurisdiction when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). Assessee in the instant case neither described the available alternate remedy under the Act as ineffectual and non-efficacious nor has the High Court ascribed cogent and satisfactory reasons to have exercised its jurisdiction in the facts of instant case and finally concluded that the Court should not have entertained the Writ Petition and allowed the appeal with liberty to the respondent if he so desires to file an appropriate petition for assessment."

The principle laid down in the above judgment is directly applicable to the present facts of the case for the reason that an effective and efficacious remedy by way of appeal is provided under Section 31 of Value Added Tax Act and the petitioner did not disclose anywhere that the statutory remedy is ineffective. However, the petition is maintainable when the impugned order is passed in violation of principles of natural justice. The petitioner requested to furnish documents pertaining to outside state purchases, like invoices, but instead of providing required documents directed the petitioner to obtain copies. Unless the documents which form basis for assessment are not furnished, it is difficult for the petitioner to give appropriate explanation for the show-cause notice. Even otherwise, the variation in the particulars furnished from time to time creates any amount of confusion. Passing any order without furnishing the documents,

despite demand, amounts to denial of opportunity to meet the claims of the respondent. Therefore, issue of such assessment order dated 21-03-2013 without affording opportunity is totally in violation of principles of natural justice. Hence, availability of alternative remedy is not sufficient to decline relief under Article 226 of Constitution of India. Undoubtedly, these contentions can be raised before appellate authority but when no documents are furnished, no useful purpose will be serviced in approaching the appellate authority under Andhra Pradesh Value Added Tax Act. Therefore, the contentions of the respondent are without any force. Hence, on this ground, the petition cannot be dismissed. Accordingly, the point is held in favour of the petitioner and against the respondent.

In the circumstances above, the impugned order of assessment cannot be sustained and is accordingly set aside. However, the respondent is at liberty to pass a fresh order of assessment after following the due process of law and furnishing all the relevant material on the basis of which the revised order of assessment was proposed and passed. The Writ Petition is accordingly allowed. Pending miscellaneous petitions, if any, shall stand closed in consequence. No order as to costs.