(2013) 08 AP CK 0028

In the Andhra Pradesh High Court

Case No : Writ Petition No. 22918 of 2013

Divya Sakthi Services APPELLANT

Vs

Commercial Tax Officer RESPONDENT

Date of Decision : 19-08-2013

Acts Referred:

Citation : (2013) 57 APSTJ 115

Hon'ble Judges : G. Rohini, J;Challa Kodanda Ram, J

Bench : Division Bench

Advocate : Shaik Jeelani Basha, for the Appellant;

Final Decision : Allowed

Judgement

Challa Kodanda Ram, J.—This writ petition is filed by the petitioner to declare the action of the respondent-Commercial Tax Officer, Balanagar Circle, Hyderabad, in passing the proceedings dated 30.03.2013, served on the petitioner on 12.06.2013 for the tax period 2009-2010 under the Central Sales Tax Act (for short "CST Act"), as arbitrary, contrary to law and in violation of principles of natural justice and rule of law and also without jurisdiction and consequently set aside the assessment proceedings dated 30.03.2013 as null and void and pass such other order or orders as the Hon''ble Court may deem fit and proper in the circumstances of the case. The writ petition assails the assessment Order dated 30.03.2013 passed by the Commercial Tax Officer, Balanagar Circle, Hyderabad for the assessment year 2009-2010 under CST Act.

2. The grievance of the petitioner is that before passing the impugned order there was no notice issued to the petitioner and further more importantly as seen from the assessment order, which was served at the address of the assessee, that the assessee had been assessed under CST Act for a net turnover of Rs. 1,29,26,970/- for an amount of Rs. 17,32,801/-.

3. A perusal of the assessment order would go to show that the said turnover has been assumed to be a turnover under CST Act, and as per the returns filed

on behalf of the assessee for the period covering from 01.04.2009 to 31.03.2010 there were no interstate sales transactions. In that view of the matter the impugned order suffers from non-application of mind and on the basis of the same no tax can be demanded.

4. On behalf of the assessee, an affidavit was filed by Smt. K. Varalakshmi W/o Late Kamma Satyanarayana Murthy. It was further stated that her husband died on 25.10.2011 and she was unaware of the business transactions and it is only after consulting the consultant, she could approach the Court on being instructed that as per the very returns which were the basis for the assessing authority i.e. respondent herein, to arrive at the turnover, there were in fact no central sales tax transactions.

5. Notice was ordered to the respondent and the counter affidavit dated 03.08.2013 was filed by the respondent. But in the counter affidavit it was not categorically denied the assertion of the petitioner in affidavit filed in support of the writ petition that during the year 2009-2010 there were no Central Sales Tax transactions and no interstate sales, and as a matter of fact the works executed during the year were all the work contracts within the State and as a matter of fact they had opted for composition and there are no dues with respect to the transactions. In the counter it has only been pleaded that the petitioner has the effective alternative remedy by way of an appeal and in that view of the matter, writ petition is not maintainable and no relief should be granted in the writ petition.

6. We have heard the learned counsel for the petitioner and the learned State Government Pleader for the Commercial Taxes.

7. Inasmuch as the assertion of the writ petitioner that there were no Central Sales Tax transactions during the year 2009-2010, having not been denied coupled with the fact that the copies of returns filed for the period from 01.04.2009 to 31.03.2010 do not disclose the Central Sales Tax transactions and there being no assertion to the contra by the respondent, we are of the opinion that the petitioner need not be relegated to the alternative remedy of appeal. It is well settled by the judgment of Supreme Court reported in The State of Uttar Pradesh Vs. Mohammad Nooh, , wherein it was held that a writ of certiorari would lie when the order passed is without jurisdiction or any violation of principals of natural justice. The relevant portion of the said judgment is extracted hereunder:

On the authorities referred to above it appears to us that there may conceivably be cases and the instant case is in point-where the error, irregularity or illegality touching jurisdiction or procedure committed by an inferior court or tribunal of first instance is so patent and loudly obtrusive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision. If an inferior court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior court''s sense of fair play the superior court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the court or tribunal of first instance, even if an appeal to another inferior court or tribunal was available and recourse was not had to it or if recourse was had to it confirmed what ex facie was a nullity for reasons aforementioned. This would be so all the more if the tribunals holding the original trial and the tribunals hearing the appeal or revision were merely departmental tribunals composed of persons belonging to the departmental hierarchy without adequate legal training and background and whose glaring lapses occasionally come to our notice. The superior court will ordinarily decline to interfere by issuing certiorari and all we say is that in a proper case of the kind mentioned above it has the power to do so and may and should exercise it. We say no more than that.

8. In this case, the facts would reveal demanding tax on non-existing transactions would amount to demanding tax without any authority of law and the same is contrary to Article 265 of the Constitution of India. For the reasons stated above and in the circumstances, the writ petition deserves to be allowed. In the result the writ petition is allowed. No order as to costs.