(2013) 01 AP CK 0006

In the Andhra Pradesh High Court

Case No : Writ Petition No. 32425 of 2010

Gammon India Ltd. APPELLANT

Vs

Commercial Tax Officer RESPONDENT

Date of Decision : 02-01-2013

Acts Referred:

Andhra Pradesh Value Added Tax Act, 2005 — Section 4(7)

Citation : (2013) 63 VST 216

Hon'ble Judges : M.S. Ramachandra Rao, J;Goda Raghuram, J

Bench : Division Bench

Advocate : Bhaskar Reddy Vemireddy, for the Appellant; P. Balaji Varma, Special Government Pleader for Commercial Taxes and Sri Venkatadri, for the Respondent

Judgement

Goda Raghuram, J.—Heard Sri Bhaskar Reddy, learned counsel for the petitioner-assessee and the learned Special Government Pleader for Commercial Taxes Sri Venkatadri for the respondent-Revenue. The endorsement dated October 20, 2010 by the respondent declining to exercise jurisdiction for rectification under rule 60 of the Andhra Pradesh Value Added Tax Rules, 2005, on the petitioner''s application dated September 14, 2010 for such rectification, is assailed in this writ petition.

2. The impugned endorsement reads:

M/s. Gammon India Ltd., are registered dealers in works contract and assessee on the rolls of the CTO, Sri Nagar Colony Circle, Hyderabad. They were assessed for the tax period December 2007 to March 2009 vide form VAT 305 dated November 4, 2009 determining under-declared tax of Rs. 5,19,139. They filed Writ Petition No. 27301 of 2009 before the honourable High Court of A.P. and the same is pending.

The dealers through their letter dated September 14, 2010 stated that in the tax return filed for the month January 2008, they have wrongly reported excess tax liability relating to the Punjagutta Flyover project and requested to revise the assessment.

In this connection, the dealers are hereby informed that since the assessment was already completed and requested to file appeal before the competent authority in the matter.

3. The petitioner is a registered dealer and an assessee on the rolls of the respondent. For the assessment year 2007-08 it filed its monthly returns and paid the taxes as per the returns. The assessment was completed by the respondent through proceedings dated November 4, 2009 determining output tax of Rs. 99,21,559 as against Rs. 93,82,401 reported by the petitioner, disallowing certain deductions claimed towards the overheads like site rent, staff salary and office and administrative expenses such as telephone, staff conveyance, etc., on the ground that these are not eligible for deduction in terms of rule 17(1)(e) of the Rules.

4. The petitioner filed Writ Petition No. 27301 of 2009 challenging the validity of rule 17(1)(e) as being ultra vires section 4(7) of the Andhra Pradesh Value Added Tax Act, 2005 (for short, "the Act"). The said writ petition has been admitted and an interim direction was granted therein, staying recovery of demand. The writ petition is pending.

5. During internal audit of the petitioner-company, the petitioner claims to have discovered that in the return filed for January, 2008 while computing the taxable turnover, the petitioner erroneously adopted a wrong turnover which resulted in reporting an higher output tax than the actual liability. The details of the error apparently noticed by the respondent are set out in para 3 of the accompanying affidavit; a detailed reference to which may not be necessary in the context of the core grievance presented in this writ petition.

6. For rectification of the aforesaid error, the petitioner represented to the respondent on September 14, 2010 invoking rule 60 of the Rules and requested rectification of the errors. By the impugned endorsement the respondent intimated the petitioner that since the assessment had already been completed the petitioner should pursue the appellate remedy. The petitioner challenges this endorsement on the ground that it constitutes abdication of the conferred power, authority and jurisdiction of the respondent, i.e., correction of errors qua rule 60 of the Rules.

Rule 60 reads:

60. Correction of errors.--Any authority prescribed, appellate or revising authority may at any time within four years from the date of any order passed by him rectify any clerical or arithmetical mistake apparent from the record. No such rectification which has the effect of enhancing the tax liability or penalty shall be made unless a notice is given to the person concerned to provide him with a reasonable opportunity of being heard.

7. Whether the petitioner''s application for rectification falls within the contours

of rule 60 is a matter to be determined by the respondent. The respondent cannot however decline to exercise jurisdiction on the sole ground that an order of assessment was passed. The impugned endorsement therefore is clearly in violation of rule 60 and in abdication of respondent''s jurisdiction thereunder.

8. For the aforesaid reasons the endorsement dated October 20, 2010 recorded by the respondent is quashed; the petitioner''s application dated September 14, 2010 seeking rectification is restored and the respondent is directed to consider the said application in terms of the provisions of rule 60 of the Rules and pass a fresh order on the merits of the said application expeditiously, preferably within a period of six weeks from the date of receipt of a copy of this order. The writ petition is disposed of as above at the stage of admission. There shall however be no order as to costs.