(2012) 07 AP CK 0023

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13515 of 2012

Krishna District Milk Producers Mutually, Aided Co-op Union Ltd.	APPELLANT
Vs	
Deputy Commissioner (CT). No. I Division and Another	RESPONDENT

Date of Decision : 25-07-2012

Acts Referred:
Andhra Pradesh Value Added Tax Act, 2005 — Section 21
Central Sales Tax Act, 1956 — Section 9(2)

Citation : (2013) 62 VST 250

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

Bench : Division Bench

Advocate : K. Raji Reddy for Venkatram Reddy Mantur, for the Appellant; P. Balaji Varma, for the Respondent

Final Decision : Allowed

Judgement

M.S. Ramachandra Rao, J.—This writ petition is filed by the petitioner challenging the order of the first respondent in R.P. No/01/2011-12 dated March 29, 2012 for the year 2005-06 whereunder the first respondent, in exercise of power under, section 9(2) of the Central Sales Tax Act, 1956 read with section 21 of the Andhra Pradesh Value Added Tax Act, 2005 revised the assessment made by the second respondent on June 18, 2008. The petitioner contends that the same is illegal, arbitrary, unjustified and violative of principles of natural justice. The petitioner is a co-operative society engaged in the business of sale of butter, ghee and cream, etc., among other products. It is a registered dealer on the rolls of the second respondent. During the assessment year 2005-06, the petitioner had effected inter-State sales of ghee. The second respondent after verifying all the books of accounts and returns filed by the petitioner as well as C forms issued by the buyers in other States completed the assessment of the petitioner under the Central Sales Tax Act, 1956, passed an assessment order dated June 18, 2008 for the said assessment year determining the net turnover of the petitioner at Rs. 9,20,32,570. He levied a tax at the concessional rate of four percent and raised a demand of Rs. 36,81,303 based on the C forms issued by the buyers in other States.

2. While so, the first respondent acting u/s 21 of the Andhra Pradesh Value Added Tax Act, 2005, read with section 9(2) of the Central Sales Tax Act, 1956, issued a show-cause notice dated April 18, 2011 proposing to revise the order dated June 18, 2008 passed by the second respondent in respect of the concessional rate of tax of four percent allowed by the second respondent covering a turnover of Rs. 2,19,57,288 in respect of inter-State sales of "ghee" effected to other registered dealers situated outside the State of Andhra Pradesh. According to the first respondent three C forms obtained by the petitioner from buyers in the State of Madhya Pradesh are not genuine. He therefore proposed to levy tax at higher rate of 12.5 percent disregarding the three C forms issued by such buyers.

3. The petitioner filed a reply dated December 26, 2011 to the said show-cause notice, inter alia, contending that the buyers in the State of Madhya Pradesh with whom it did business are registered dealers having TIN Number allotted by the authorities of the Commercial Tax Department in that State, that such authorities have furnished the statutory C forms duly filled in with the seal of the issuing authority in Hindi and therefore the first respondent is not justified in treating the said C forms issued by the buyers of the petitioner as not genuine. It also contended that it had obtained the C forms bonafidely and therefore the first respondent is not justified in disregarding them by levying tax at the higher rate of tax of 12.5 per cent. It submitted that it had enquired with the concerned officials and also the purchasing dealer who in fact had sent a letter dated June 3, 2010 issued and duly signed by the Commercial Tax Officer, Circle V, Bhopal, who is his assessing authority with its official seal stating that the purchasing dealer M/s. Bharatiya Trading Company, Bhopal, is an existing registering dealer on his rolls and the C forms bearing No. A-1/4370535 dated November 12, 2004, No. A-1/2510381 dated December 28, 2005 and No. A-1/2510382 dated December 20, 2005 respectively were issued by the officials of the said Commercial Tax Officer V, Bhopal. The said letter was also enclosed to the reply dated December 26, 2011 given by the petitioner to the show-cause notice dated April 18, 2011 given by the first respondent. The petitioner contended that this letter proves that the three C forms filed by the petitioner relating to M/s. Bhartiya Trading Company, Bhopal doubted by the first respondent are genuine ones and not fake. It contended that if the first respondent still feel that the C forms are fake, they may be sent to a forensic lab to ascertain their genuineness.

4. It is the contention of the petitioner in the writ petition that the first respondent had passed the impugned order dated March 29, 2012 without considering the detailed reply filed by the petitioner and the letter dated June 3, 2010 issued by the Commercial Tax Officer V, Bhopal. The petitioner contended that the first respondent has acted arbitrarily and contrary to the material evidence on record and the first respondent ought to have conducted

independent enquiry without relying on some report sent by the officials. The petitioner also contended that the first respondent has not even enquired with the assessing authority of the purchasing dealer with regard to the genuineness of the letter dated June 3, 2010 issued by them and prayed that the impugned order be set aside.

5. Heard the learned counsel for the petitioner Sri K. Raji Reddy and Sri P. Balaji Varma, standing counsel for the respondents. We have also perused the impugned order passed by the first respondent and the documents filed by the petitioner in support of its case.

6. It is clear from the material on record that the petitioner had enclosed the letter dated June 3, 2010 issued by the Commercial Tax Officer, Circle V, Bhopal, to his reply dated December 26, 2011 addressed to the first respondent in response to the show-cause notice dated April 18, 2011 issued by the first respondent. This fact is not disputed by the learned Standing Counsel appearing for the respondents. The reply dated December 26, 2011 given by the petitioner to the first respondent at para 4 specifically refers to the letter dated June 3, 2010 of the Commercial Tax Officer, Circle V, Bhopal, referred to above and states that it was annexed as annexure P1 to the said reply. At page 5 of the impugned order, the first respondent extracted para 4 of the reply dated December 26, 2011 given by the petitioner to his show-cause notice dated April 18, 2011 but he did not meet the contention of the petitioner that the said letter dated June 3, 2010 of the Commercial Tax Officer, Circle V, Bhopal, would show that the C forms filed by it are genuine. The three C forms mentioned in the said letter were alleged by the first respondent to be not genuine in his show-cause notice. It is unfortunate that the first respondent has not considered the letter dated June 3, 2010 filed by the petitioner along with its reply dated December 26, 2011 to the show-cause notice dated April 18, 2011 issued by him. In our view this vitiates the order passed by the first respondent. Therefore the impugned order passed by the first respondent is set aside. The matter is remanded to the first respondent to consider afresh in the light of the reply dated December 26, 2011 given by the petitioner (to the show-cause notice dated April 18, 2011) and the letter dated June 3, 2010 filed by the petitioner along with the said reply and then pass a reasoned order. The writ petition is allowed to the above extent. No costs.

