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(2014) 06 AP CK 0200

In the Andhra Pradesh High Court

Case No : W.P. No. 807 of 2014

Kumar Enterprises APPELLANT

Vs

State of Andhra Pradesh and Others RESPONDENT

Date of Decision : 04-06-2014

Acts Referred:

Citation : (2014) 59 APSTJ 72

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

Bench : Division Bench

Advocate : Shaik Jeelani Basha, Advocates for the Appellant

Judgement

Ashutosh Mohunta, J.—This Writ Petition is filed challenging the order dated 26.11.2013 passed by the third respondent for the assessment period from 2006-07 to 2008-09 as arbitrary, contrary to the provisions of the APVAT Act and without jurisdiction and consequently to set aside the same. The petitioner is a registered dealer under the A.P. Value Added Tax Act on the rolls of the third respondent and is carrying on business in surgical goods, Hospital furniture etc. The third respondent issued a show cause notice dated 19.9.2009 in Form VAT 305A proposing to levy tax at the rate of 12.5% on surgical goods, hospital furniture etc sold to the local hospitals and medical colleges treating them as falling under V Schedule of the Act and following the circular of the second respondent dated 20.2.2009. The petitioner submitted his detailed explanation to the show cause notice on 14.10.2009, wherein it was also stated that the petitioner filed an application dated 16.9.2009 before the Advance Ruling Authority for clarification on ruling as to the rate of tax on the medical equipment and the same is pending adjudication. While so, the third respondent passed the impugned order dated 26.11.2013 imposing tax in terms of the circular of the second respondent dated 16.11.2010. Hence this Writ Petition.

2. The petitioner challenged the assessment proceedings dated 26.11.2013 on several grounds including that the third respondent who is authorized to conduct audit is not specifically authorized to exercise the power of assessment. He

placed reliance on the decisions of this Court in Writ Petition No. 9806 of 2013, dated, 02.04.2013, Writ Petition No. 11271 of 2013, dated 15.04.2013, Writ Petition Nos. 7625 and 7552 of 2013, dated 19.03.2013 etc.

3. In the counter filed by the third respondent, it has been stated that the Deputy Commissioner (CT), Vijayawada No. 1 Division issued order dated 26.3.2013 authorizing him to cause inspection of the records of the petitioner and that by order dated 23.11.2013 he has been authorized to assess the petitioner and pass assessment orders.

4. This Court in the aforesaid decisions, following its earlier decisions in the cases of Sri Balaji Floor Mills, Chittoor Vs. Commercial Tax Officer-II, Chittoor (52 APSTJ 85) and Dekars Fires & Security Systems Pvt. Ltd. Vs. Dy. Commissioner of Commercial Tax, Secunderbad (53 APSTJ 45), held that it is essential for the non-territorial officer to have the specific authorization even by the date of issuing the notice in Form VAT 305 A.

5. In the case on hand, show cause notice in form VAT 305-A dated 19.9.2009 has been issued by the third respondent and the same is much prior to the date of authorization given to the third respondent on 23.11.2013. Since no authorization was given to the third respondent by the date of the show cause notice dated 19.9.2009, the impugned orders of assessment are liable to be set aside on the ground of lack of jurisdiction. In Official Trustee, West Bengal and Others Vs. Sachindra Nath Chatterjee and Another, the Apex Court held that before a Court can be held to have jurisdiction to decide a particular matter, it must not only have jurisdiction to try the matter/suit brought before it, but must also have the authority to pass the order sought for; and that it is not sufficient that it has some jurisdiction in relation to the subject-matter of the dispute. Its jurisdiction must include the power to hear and decide the questions at issue, the authority to hear and decide the particular controversy that has arisen between the parties. In the light of the aforesaid legal position, the impugned order of assessment is liable to be quashed on that ground.

6. In view thereof, we are not inclined go into other aspects of the matter, since it is settled principle that when a decision of an administrative, judicial or a quasi judicial authority is liable to be invalidated on the point of patent lack of jurisdiction, it is not appropriate to deal with other issues and therefore we decline to consider and adjudicate upon the challenge to the impugned order of assessment presented by the petitioner on the grounds other than lack of jurisdiction in the third respondent.

7. In the light of the foregoing discussion, the order dated 26.11.2013 passed by the third respondent under the provisions of the APVAT Act 2005 for the assessment periods 2006-07 to 2008-09 is quashed. The appropriate and competent assessing authority however is at liberty to pass fresh assessment order after following due procedure and in accordance with law. The Writ Petition is allowed. In sequel thereto, the miscellaneous petitions pending consideration if

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any shall stand closed. No order as to costs.

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