

(2011) 04 AP CK 0090

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 10578 and 10592 of 2011

Mahabaleswarappa and Sons

APPELLANT

Vs

Assistant Commissioner (LTU) and Others

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Andhra Pradesh Value Added Tax Act, 2005 — Section 33
Central Sales Tax Act, 1956 — Section 5, 5(3), 5(4)

Citation : (2013) 62 VST 241

Hon'ble Judges : V.V.S. Rao, J;Ramesh Ranganathan, J

Bench : Division Bench

Advocate : S.R.R. Viswanath, for the Appellant; A.V. Krishna Kaundinya, Special Standing Counsel for Commercial Taxes, for the Respondent

Final Decision : Disposed Off

Judgement

V.V.S. Rao, J

1. The petitioner is a firm engaged in the business of mining and selling of iron ore. It is a dealer on the rolls of the first respondent. During 2005-06 and 2006-07, statedly, they supplied iron ore to M/s. Bellari Iron Ores Private Limited, an exporter. In their returns, under the Central Sales Tax Act, 1956 ("the Act", for brevity), they claimed exemption as "sales for export" u/s 5(3) of the Act. They produced H form, as required u/s 5(4) of the Act, before the assessing officer. It appears that, as the H form was for the entire year, it was accepted and the sales by the petitioner to the exporter was treated as local sales and assessment was completed. The second respondent initiated revisional proceedings. After receiving notice proposing to withdraw the exemption u/s 5(3) of the Act, inter alia, on the ground that H forms for quarterly periods were not submitted, the petitioner submitted their explanation. Along with the same they, statedly, produced quarterly H forms. By the impugned endorsement dated August 3, 2010 the second respondent declined to accept the quarterly H forms. Being aggrieved the petitioner preferred appeals u/s 33 of the Andhra Pradesh

Value Added Tax Act, 2005. The appeals were dismissed by the Sales Tax Appellate Tribunal as not maintainable. The petitioner is, therefore, before this court. The counsel for the petitioner and the Special Counsel for the Commercial Taxes made their submissions. They later also submitted that the revision before the second respondent is still pending, and that the petitioner failed to produce quarterly H forms at the time of assessment.

2. Section 5 of the Act requires a dealer to furnish a declaration in the prescribed form duly signed by the exporter to whom the goods are sold so as to claim the benefit as "sales for export". Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 ("the Rules", for brevity) prescribes the method, manner and modalities of furnishing various forms/declarations by a dealer to claim reduced rate of tax or exemption from payment of taxes under the State law. In the case of a dealer supplying goods for the purpose of export, sub-rule (10)(a) of rule 12 of the Rules is relevant. This mandates a dealer to file a declaration signed by the exporter in form H to the prescribed authority up to the time of assessment by the assessing authority. There is no dispute that the petitioner, indeed, submitted form H when it filed the value added tax returns before the first respondent which were accepted. Thus, the question is does the law prohibit filing of declaration in form H covering the entire annual transaction or does it require a declaration in form H for each transaction or each quarter. A plain reading of rule 12(10)(a) of the Rules does not, in any manner, support the view that they are required to be filed for quarterly periods, and not for entire year. Even a machinery provision has to be read in a manner that is workable. If rule 12(10)(a) of the Rules is interpreted as requiring a dealer to submit declarations in H forms for each transaction it may, in some cases, even frustrate the contract which the dealer entered into with the exporter. Even a plain and literal reading would not admit to any such interpretation that a dealer should submit declarations in H forms quarterly. For these reasons, we are inclined to set aside the impugned endorsements.

3. Accordingly the impugned endorsements are set aside. The second respondent is now required in law to consider the revision taking into consideration all the material filed by the petitioner including the declarations in H forms. We record the submission of the counsel for the petitioner that they have now also filed the declarations in H forms for quarterly periods. The writ petitions shall stand disposed of accordingly. There shall be no order as to costs.