(2013) 01 AP CK 0053

In the Andhra Pradesh High Court

Case No : Writ Petition No. 39370 of 2012

M.K.B. Cold Storage — APPELLANT

Vs

Commercial Tax Officer and Another — RESPONDENT

Date of Decision : 03-01-2013

Acts Referred:
Andhra Pradesh Value Added Tax Act, 2005 — Section 21, 21(4), 31, 32, 33

Citation : (2013) 61 VST 1

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

Bench : Division Bench

Advocate : S.R.R. Viswanath, for the Appellant; B. Venkatadri, Special Government Pleader for Commercial Taxes, for the Respondent

Judgement

Goda Raghuram, J.—The order of the second respondent dated November 8, 2012 passed in Appeal No. 53 of 2012-13 (CTR) preferred by the petitioner, to the extent the second respondent failed to consider the challenge to the order of reassessment passed by the first respondent, on the ground that the same was barred by limitation and the consequent remit of the matter to the first respondent for de novo consideration on merits, is challenged in this writ petition. The relevant facts are that the petitioner is a cold storage unit which extends the facility of protective storage for agricultural products and is a registered dealer on the rolls of the first respondent under the provisions of the Andhra Pradesh Value Added Tax Act, 2005 (for short, "the 2005 Act"). The petitioner''s unit was inspected by the DCTO, Regional Vigilance and Enforcement Office, Tirupathi, on July 7, 2006 and 1600 tonnes of tamarind stored in the cold storage unit was detected. On the basis of the consequent vigilance report, the first respondent completed the assessment vide an order dated March 25, 2008, rejecting the petitioner''s objections. Aggrieved, the petitioner preferred an appeal to the second respondent. The second respondent vide orders dated September 11, 2008 set aside the assessment order dated March 25, 2008 and remitted the matter to the first respondent to make requisite enquiries and pass an assessment order de novo, after affording an opportunity to the petitioner.

The second respondent''s order was communicated to the first respondent on October 29, 2008 and the first respondent communicated in turn the appellate order to the petitioner on the same date.

2. After the remit as above, the first respondent passed a reassessment order on August 31, 2012. Aggrieved, the petitioner preferred an appeal to the second respondent wherein, apart from challenging the reassessment order dated August 31, 2012 on merits, the petitioner also contended that the order of reassessment consequent on the appellate order dated September 11, 2008, was barred by limitation u/s 37 of the Andhra Pradesh Value Added Tax Act, 2005. The second respondent however in the impugned appellate order dated November 8, 2012 recorded the petitioner''s contention that the first respondent''s reassessment order dated August 31, 2012 is barred by limitation, rejected the contention on the ground that qua the provisions of section 21(4) of the Andhra Pradesh Value Added Tax Act, 2005, the prescribed authority may make an assessment within period of four years from the end of the period for which the assessment is to be made.

3. It is however fairly conceded by the learned Special Government Pleader for Commercial Taxes that the appropriate provision, as rightly contended by the petitioner/assessee, is section 37 which deals with the period of limitation in case of reassessment consequent on appellate intervention.

4. Section 37, which commences with a non obstante clause enacts "not withstanding anything contained in sections 21 and 32 where an assessment, reassessment, rectification in or revision of an assessment is made in respect of a dealer or any person, in pursuance or in consequence of or to give effect to any finding or direction contained in an order under sections 31, 32, 33, 34 and 35 or in an order of any court in a proceeding, otherwise than by way of appeal or revision; such assessment, reassessment, rectification in or revision, of an assessment shall be made within three years from the date of receipt of such order by the prescribed or revising authority as the case may be."

5. This provision is the one which is applicable to define the period within which the first respondent was competent to make an order of reassessment consequent on the remand to the said respondent by the second respondent''s appellate order dated September 11, 2008, communicated to the first respondent/assessing authority on October 29, 2008. Consequently the first respondent should have passed the order of assessment on or before October 28, 2011. The order of assessment was however passed on August 31, 2012. This error was glossed over in the appellate order of the second respondent dated November 8, 2012 by relying on an inapplicable statutory provision, namely, section 21(4), whereas it is section 37 of the 2005 Act, which is applicable, is the position conceded on behalf of the Revenue.

6. On the aforesaid analysis the order of the second respondent dated November 8, 2012 remitting the matter for de novo consideration by the first respondent

cannot be sustained and is accordingly quashed. Since the order of assessment dated August 31, 2012 passed by the first respondent consequent on the earlier order of the second respondent-appellate authority dated September 11, 2008, received by the first respondent on October 29, 2008, is barred by the period of limitation specified in section 37 of the 2005 Act, the said order of assessment is also unsustainable and is so declared. The writ petition is allowed as above. But in the circumstances without costs.

