

(2013) 02 AP CK 0060

In the Andhra Pradesh High Court

Case No : Writ Petition No. 39372 of 2012

Murugan Cold Storage (P.) Ltd. and Another

APPELLANT

Vs

Commercial Tax Officer and Another

RESPONDENT

Date of Decision : 04-02-2013

Acts Referred:

Andhra Pradesh Value Added Tax Act, 2005 — Section 14, 14(1), 19, 20, 21
Income Tax Act, 1961 — Section 148, 153(2), 153(3)

Citation : (2013) 198 ECR 177 : (2013) 59 VST 330

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

Bench : Division Bench

Advocate : S.R.R. Viswanath, for the Appellant; P. Balaji Varma, Special Government Pleader for Commercial Tax, for the Respondent

Judgement

M.S. Ramachandra Rao, J.—The second petitioner in these writ petitions is a director in M/s. Murugan Cold Storage (P) Ltd., (which is the first petitioner in W.P. No. 39372 of 2012) and in M/s. Punganur Cold Storage Pvt. Ltd. (which is the first petitioner in W.P. No. 39375 of 2012 and in W.P. No. 39379 of 2012). In W.P. No. 39372 of 2012, the petitioners submit that on the basis of a report of Regional Vigilance and Enforcement Office, Tirupathi, dated May 24, 2002 (whose officers had inspected the premises of the first petitioner on May 6, 2002), an ex parte assessment order dated March 31, 2006 was passed by the first respondent; that the first petitioner challenged it by way of appeal before the second respondent; by order dated December 30, 2008, for years 2002-03 and 2004-05, he set aside the assessment order and remanded the matter for fresh disposal by the first respondent; this order was received by the first respondent on February 18, 2009; the first respondent, without making any further investigation and enquiry as directed by the second respondent, completed the reassessment and confirmed the levy of tax, by order dated August 31, 2012; that the said order of reassessment ought to have been passed within a period of three years from the date of receipt of such order by the first respondent, i.e., on or before February 17, 2012 as mandated by section 24A of

the Andhra Pradesh General Sales Tax Act, 1957; that the reassessment order passed by the first respondent is barred by limitation; that the order of the first respondent was again challenged before the second respondent in appeal and a specific plea of bar of limitation was raised before the second respondent; but the second respondent, by order dated November 9, 2012, rejected the said plea of limitation and remanded the matter back to the first respondent to cause a thorough enquiry on all aspects, verify books of accounts and other records and pass orders de novo; that this order is unsustainable and ought to be quashed on the ground that it is without jurisdiction.

2. In W.P. No. 39375 of 2012, the petitioners submit that on the basis of a report of Regional Vigilance and Enforcement Office, Tirupathi, dated May 2, 2002 (whose officers had inspected the premises of the first petitioner on April 16, 2002), an ex parte assessment order dated March 31, 2006, was passed by the first respondent; the first petitioner challenged it by way of appeal before the second respondent; by order dated December 30, 2009, for years 2002-03, 2005-06 and 2006-07, he set aside the assessment order and remanded the matter for fresh disposal by the first respondent; this order was received by the first respondent on February 10, 2009; the first respondent, without making any further investigation and enquiry as directed by the second respondent, completed the reassessment and confirmed the levy of tax, by order dated August 31, 2012; the said order of the reassessment ought to have been passed within a period of three years from the date of receipt of such order by the first respondent, i.e., on or before February 10, 2012 as mandated by section 24A of the Andhra Pradesh General Sales Tax Act, 1957; the reassessment order passed by the first respondent is barred by limitation; that the order of the first respondent was again challenged before the second respondent in appeal and a specific plea of bar of limitation was raised before the second respondent; but the second respondent, by order dated November 9, 2012, rejected the said plea of limitation and remanded the matter back to the first respondent to cause a thorough enquiry on all aspects, verify books of accounts and other records and pass orders de novo; that this order is unsustainable and ought to be quashed on the ground that it is without jurisdiction.

3. In W.P. No. 39379 of 2012, the petitioners submit that on the basis of a report of the Regional Vigilance and Enforcement Office, Tirupathi dated August 29, 2006 (whose officers had inspected the premises of the first petitioner on April 17, 2006), an assessment order dated March 25, 2008 under the Andhra Pradesh General Sales Tax Act, 1957 and the Andhra Pradesh Value Added Tax Act, 2005 was passed by the first respondent; the first petitioner challenged it by way of appeal before the second respondent; by order dated December 30, 2009, for years 2002-03 to 2006-07, he set aside the assessment order and remanded the matter for fresh disposal by the first respondent; this order was received by the first respondent on February 10, 2009; the first respondent, without making any further investigation and enquiry as directed by the second respondent, completed reassessment and confirmed the levy of tax by order dated August

31, 2012; the order of the reassessment ought to have been passed within a period of three years from the date of receipt of such order by the first respondent, i.e., on or before February 10, 2012, as mandated by section 37 of the Andhra Pradesh Value Added Tax Act, 2005; the reassessment order passed by the first respondent is barred by limitation; the order of first respondent was again challenged before the second respondent in appeal and a specific plea of bar of limitation was raised before the second respondent; but the second respondent, by order dated November 9, 2012, rejected the said plea of limitation and remanded the matter back to the first respondent to cause a thorough enquiry on all aspects, verify books of accounts and other records and pass orders de novo; this order is unsustainable and ought to be quashed on the ground that it is without jurisdiction.

4. Heard Sri S.R.R. Viswanath, learned counsel for the petitioners and Sri P. Balaji Varma, learned Special Government Pleader for Commercial Taxes.

5. The learned counsel for the petitioners contended that the orders of reassessment passed by the first respondent beyond the period of three years from the date of receipt by him of the respective orders of the appellate authority (second respondent) (remitting the matter to the first respondent) as required u/s 24A of the Andhra Pradesh General Sales Tax Act, 1957 and section 37 of the Andhra Pradesh Value Added Tax Act, 2005 are barred by limitation; that this point was specifically raised before the second respondent in the appeal filed before him by the petitioners against the orders of reassessment, but he erroneously rejected the said contention; that the second respondent could not have relied upon section 20(5) of the Andhra Pradesh General Sales Tax Act, 1957 or section 21(4) of the Andhra Pradesh Value Added Tax Act, 2005 and instead should have considered section 24A of the Andhra Pradesh General Sales Tax Act, 1957 and section 37 of the Andhra Pradesh Value Added Tax Act, 2005; that the orders dated January 9, 2012 of the second respondent impugned in the writ petitions are required to be quashed as they are without jurisdiction. He relied upon the decisions in K. Mohd. Osman Saheb and Co. Vs. State of Andhra Pradesh and Others, and The Cement Distributors (P.) Ltd. Vs. The Deputy Commercial Tax Officer and Others, . He also contended that the second respondent by the impugned order could not have conferred jurisdiction on the first respondent to pass orders beyond limitation, contrary to the above provisions of law and direct him to make fresh de novo assessments, and relied upon P. Vittal Pai and Others Vs. Agricultural Income Tax Officer, Puttur, Hope Textiles Ltd. and Another Vs. Union of India (UOI) and Others, and Bengal Tea and Fabrics Ltd. Vs. Assistant Commissioner of Taxes,

6. Section 20(5) of the Andhra Pradesh General Sales Tax Act, 1957 reads:

20. (5) Where an order passed under this section has been set aside by any court or other competent authority under this Act for any reason the period between the date of such order and the date on which it has been so set aside shall be excluded in computing the period of four years specified in sub-section

(3) for the purpose of making a fresh revision, if any, under this section.

7. Section 24A of the Andhra Pradesh General Sales Tax Act, 1957 enacts:

24A. Limitation in respect of certain assessments or reassessments ordered.-- Notwithstanding anything in sections 14 and 20 where an assessment, reassessment, rectification in or revision of an assessment is made in respect of an assessment or any person, in pursuance or in consequence of or to give effect to any finding or direction contained in an order u/s 19, section 20, section 21, section 22 or section 23 or in an order of any court in a proceeding, otherwise than by way of appeal or revision under this Act, 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 assessing or revising authority, as the case may be.

8. Section 21(4) of the Andhra Pradesh Value Added Tax Act, 2005, reads as follows:

21. (4) The authority prescribed may, based on any information available or on any other basis, conduct a detailed scrutiny of the accounts of any VAT dealer or TOT dealer and where any assessment as a result of such scrutiny becomes necessary, such assessment shall be made within a period of four years from the end of the period for which the assessment is to be made.

9. Section 37 of the Andhra Pradesh Value Added Tax Act, 2005 reads:

37. Limitation in respect of certain assessments or reassessments ordered.-- Notwithstanding 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:

Provided that if such an appeal, order or order of any court has been subjected to further appeal, either partially or entirely, and if there are orders of stay prohibiting the authority concerned to pass consequential orders, the period of three years shall get extended by the period during which such stay orders were in force:

Provided further that if the subsequent appeal results in modification of such appeal, order or order of any court which is subjected to further appeal, either partially or wholly, the period of three years shall be computed from the date of receipt of subsequent order of appeal but not from the date of receipt of the original appeal, order or order of any court which was subjected to further appeal.

10. A reading of the above provisions of law would indicate that section 20(5) of

the Andhra Pradesh General Sales Tax Act, 1957, would apply only where the Commissioner of Commercial Taxes exercises revisional powers u/s 20 and such order is set aside by any court or other competent authority, but would not apply, where an order of assessment of the assessing authority is set aside in appeal by the appellate authority under the Act, and de novo assessment is directed in pursuance of or in consequence of or to give effect to any finding or direction contained in an order u/s 19. In such a situation only section 24A is attracted.

11. Section 21(4) of the Andhra Pradesh Value Added Tax Act, 2005 would apply only for normal assessment made for the first time by the assessing officer, but where an order of assessment of the assessing authority is set aside in appeal by the appellate authority under the Act, and de novo assessment is directed in pursuance of or in consequence of or to give effect to any finding or direction contained in an order u/s 31, only section 37 is attracted.

12. In this view of the matter, it is clear that in the impugned orders, the second respondent had incorrectly relied upon section 20(5) of the Andhra Pradesh General Sales Tax Act, 1957 and section 21(4) of the Andhra Pradesh Value Added Tax Act, 2005 to sustain the orders of reassessment made by the first respondent. We are of the view that the orders of reassessment passed by the first respondent are beyond the period of three years from the date of receipt of the orders of the second respondent in all the cases, and therefore, the first respondent had no jurisdiction to pass the said orders.

13. In *K. Mohd. Osman Saheb and Co. Vs. State of Andhra Pradesh and Others*, , where a notice proposing fresh assessment as well as the order of assessment is passed beyond the period of four years prescribed in section 14(1) of the Act, it was held to be without jurisdiction and barred by time.

14. In *Hope Textiles Ltd. and Another Vs. Union of India (UOI) and Others*, , the Supreme Court held that the High Court cannot give a direction to an authority under the income tax Act, 1961 to ignore the period of limitation prescribed under the said Act to make an order of assessment. In the said case, for the assessment year 1971-72, the appellant-company filed a return on the basis of which an order of assessment was made on March 27, 1974, accepting certain losses disclosed by it. On February 21, 1976, a reassessment notice was issued u/s 148 of the income tax Act, 1961, pursuant to which the company filed a return disclosing further losses. No orders were passed till September 1981. The appellant-company filed a writ petition in the High Court for a mandamus to the income tax Officer to pass orders in pursuance of the said notice. The High Court dismissed the writ petition holding that no mandamus could be issued compelling income tax Officer to make an order of assessment beyond the period of limitation prescribed by section 153(2). The appellant-company preferred an appeal to the Supreme Court. The Supreme Court dismissed the appeal, observing that sub-clause (ii) of section 153(3) could not be understood as empowering the High Court to give a direction to the authority under the Act to ignore the period of limitation prescribed under the Act.

15. The learned Special Government Pleader for Taxes did not dispute the above legal position.

16. On the aforesaid analysis, we are of the view that orders of the first respondent as confirmed by the second respondent are barred by limitation prescribed u/s 24A of the Andhra Pradesh General Sales Tax Act, 1957 and section 37 of the Andhra Pradesh Value Added Tax Act, 2005 and hence, are without jurisdiction. Consequently, the writ petitions are allowed and the orders dated November 9, 2012 of the second respondent, to the extent he directed the first respondent to make de novo assessments, is quashed and the first respondent is restrained from proceeding any further in the matter. No costs.