(1982) 12 AP CK 0036

In the Andhra Pradesh High Court

Case No : Tax Revision Case No''s. 36 and 37 of 1979

S. Anjaiah Setty APPELLANT

Vs

State of Andhra Pradesh RESPONDENT

Date of Decision : 22-12-1982

Acts Referred:

Citation : (1983) 53 STC 262

Hon'ble Judges : Punnayya, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : S. Dasaratharama Reddi, for the Appellant; Government Pleader for Commercial Taxes, for the Respondent

Judgement

Jeevan Reddy, J.—In these cases, the two assessees, filed their returns but did not enclose forms I (contemplated by the Fifth Schedule to the Act) as required by rule 6-A of the rules. After they filed their returns, the first assessing authority gave a show cause notice on 8th August, 1977, calling upon the assessees to file their accounts within a week therefrom. On 13th August, 1977, both the assessees filed a joint application requesting for 15 days'' time for producing their accounts. On 16th August, 1977, the assessing authority completed the assessment, and because forms I were not produced by the assessees, sales tax was levied on the turnover of jaggery also. The assessees appealed and complained that in spite of asking for time the assessing authority did not give an opportunity for producing forms I. The appellate authority rejected this complaint holding that the time asked for in the application filed by the assessees on 13th August, 1977, was not for producing forms I but that the request related only to accounts. On further appeal, the Tribunal held that, in spite of searching the records, they are not able to trace out the application dated 13th August, 1977, referred to by the assessees.

2. In these two revision cases, it is contended by Sri Dasaratharama Reddi that when the first appellate authority itself says that such an application is found at page 73 of the assessment record, the Tribunal''s statement that it could not find

such an application is unacceptable. He also contended that no orders were passed upon their application for adjournment, and therefore the assessees could not file forms I before the finalisation of the assessment; and that when they wanted to file the same before the first appellate authority they were refused because it has no power to receive the same at the appellate stage.

3. It is unnecessary for us to go into the question whether the petitioners had, in fact, tried to file forms I before the first appellate authority or not. Suffice it to say that the first appellate authority was rather hyper-technical in observing that the application dated 13th August, 1977, did not pertain to forms I, but only to accounts. Obviously time was asked for in the said application for producing all the materials the petitioners wanted to in pursuance of the show cause notice. While it is true that there is no specific reference to forms I in the said application, but in the circumstances, it would be reasonable to construe the said request as extending to all the documents which the petitioners wanted to produce in support of their case. Mr. Dasaratharama Reddi says that forms I are now ready with the petitioners and if an opportunity is given they will file these forms before the authority forthwith. In these circumstances, we are of the opinion that this is a fit case where an opportunity should to given to the petitioners to produce forms I before the first assessing authority.

4. The tax revision cases are accordingly allowed, and the matter is remitted to the first assessing authority who shall receive forms I, if they are produced by the petitioners within seven days of the receipt of notice to be sent by the first assessing authority calling upon the petitioners to produce the said forms. The petitioners shall not be entitled to any further time than what is stipulated hereinabove. If forms I are produced within the said time, they may be taken into consideration and appropriate orders passed according to law.

5. The tax revision cases are allowed to the extent indicated. No order as to costs. Advocate''s fee Rs. 400 consolidated.