(1996) 02 AP CK 0049

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2780 of 1996

Sew Constructions Limited APPELLANT

Vs

Commercial Tax Officer and Others RESPONDENT

Date of Decision : 14-02-1996

Acts Referred:

Andhra Pradesh General Sales Tax Rules, 1957 — Rule 12
Constitution of India, 1950 — Article 226

Citation : (2003) 133 STC 87

Hon'ble Judges : Y.V. Narayana, J;Syed Shah Mohammed Quadri, J

Bench : Division Bench

Advocate : S. Krishna Murthy, for the Appellant; The Special Government Pleader for Taxes, for the Respondent

Final Decision : Allowed

Judgement

Syed Shah Mohammed Quadri, J.—The petitioner challenges the validity of the provisional assessment order in G.I. No, 7531/95-96, dated February 5, 1996 as being violative of principles of natural justice as well as Rule 12 of the Andhra Pradesh General Sales Tax Rules, 1957.

2. The petitioner is a public limited company engaged in the business of execution of works contracts. For the period from April 1, 1995 to December 31, 1995, the petitioner filed form A-2 returns. The first respondent not being satisfied with the correctness of the returns called upon the petitioner to submit certain statements of works and on the basis of the material thus provided, proceeded to make the impugned provisional assessment order and on that basis issued form B2 demand notice calling upon the petitioner to pay a tax of Rs. 77,08,174. It is the correctness of this order that is assailed in this writ petition.

3. Mr. S. Krishna Murthy, the learned counsel for the petitioner, contends that under Rule 12 of the Andhra Pradesh General Sales Tax Rules, it is incumbent on the assessing authority to give reason-able opportunity of proving the correctness of the return. Without giving such an opportunity, the impugned

provisional assessment order is passed and so it is liable to be quashed. The learned Government Pleader however, contends that Rule 12 is not attracted and that the petitioner has a right of appeal against the provisional assessment order.

4. We may at the outset mention that the ground of existence of alternative remedy does not bar the jurisdiction under article 226 of the Constitution though this Court more often directed the parties to resort to the alternative remedy where having regard to the facts and circumstances of the case the ends of justice so demanded. However, in cases where there has been violation of principles of natural justice, this Court has not insisted upon exhaustion of the alternative remedy. In our view, this is one such case where the petitioner cannot be denied relief merely because alternative remedy is available for the simple reason that in this case there has been not only denial of principles of natural justice but also violation of Rule 12 of the Andhra Pradesh General Sales Tax Rules. Rule 12 of the said Rules reads as follows :

"12. Where any dealer (liable to get himself registered u/s 12 of the Act) fails to submit a return before the date prescribed in that behalf or produces the accounts, registers and other documents after inspection or submits the returns subsequent to the date of inspection the assessing authority shall after issuing a notice to the dealer and making such enquiry as he considers necessary, assess him to the best of his judgment.

Where any return submitted by a dealer appears to the assessing authority to be incorrect or incomplete, the assessing authority shall, after giving the dealer a reasonable opportunity of proving the correctness and completeness of the return submitted by him and making such enquiry as he deems necessary, assess him to the best of the judgment."

5. The second paragraph of Rule 12, extracted above, makes it clear that where any return submitted by the dealer appears to be incorrect to the assessing authority, the authority has to give a reasonable opportunity to the dealer to prove the correctness and completeness of the return submitted by him and has to make an enquiry as he may deem necessary and then has to assess to the best of the judgment.

6. In this case, the assessing authority having felt that form A-2 return filed for the said months, is not correct, called upon the assessee to show its statements and made provisional assessment on a total turnover of Rs. 19,27,04,344 as against the net turnover of Rs. 1,58,64,666 shown in form A-2 return. From the impugned order, it is clear that the requirements of Rule 12 have not been complied with. The learned Government Pleader was called upon to produce the records. A perusal of the record also does not disclose that reasonable opportunity was given to the petitioner-assessee before passing the provisional assessment order.

7. For these reasons, the impugned provisional order of assessment is liable to be quashed and we accordingly do so. We make it clear that this order does not

preclude the first respondent from following the procedure laid down in Rule 12 of the Andhra Pradesh General Sales Tax Rules and passing the order of assessment to the best of the judgment afresh.

8. The writ petition is accordingly allowed, but in the circumstances of the case, we make no order as to costs.

