(2014) 03 AP CK 0027

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5604 of 2014

Sizzler APPELLANT

Vs

Government of Andhra Pradesh RESPONDENT

Date of Decision : 05-03-2014

Acts Referred:

Andhra Pradesh Value Added Tax Act, 2005 — Section 22(6)(a), 31
Constitution of India, 1950 — Article 226

Citation : (2014) 58 APSTJ 295

Hon'ble Judges : M. Satyanarayana Murthy, J;Ashutosh Mohunta, J

Bench : Division Bench

Advocate : Milind G. Gokhale, Advocate for the Appellant; Dantu Srinivas, Special Standing Counsel, Advocate for the Respondent

Judgement

M. Satyanarayana Murthy, J.—This writ petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for the records pertaining to the order dated 26.09.2013 passed by the 3rd respondent refusing to grant instalments for payment of 12.5% of the disputed tax/penalty and quash the impugned order granting 6 equated monthly instalments for payment of 12.5% of disputed tax/penalty assessed by the 4th respondent and to entertain the appeal No. A/109/2013-14. It is alleged that the petitioner is Proprietor of Readymade Garments and Hosiery Goods Shop engaged in purchase of material from wholesale dealers and selling the material on retail basis to the customers. The Assistant Commissioner; Intelligence (FAC) Abids Division-2nd respondent herein issued show cause notice dated 29.11.2012 directing the petitioner to file objections against his proposed ''Best Judgment assessment'' within seven days. Immediately, the petitioner filed objections in detail on 15.03.2013 followed by written submission pointing out the defects in the proposed best judgment assessment and contended that the best judgment assessment is not valid. But without considering various contentions urged in reply/objections dated 15.03.2013, the 2nd respondent passed an assessment order dated 30.03.2013.

2. Aggrieved by the assessment order, the petitioner preferred an appeal before the Deputy Commissioner-4th respondent herein within the period of limitation and according to Section 31 of A.P. VAT Act 12.5% of the disputed tax shall be deposited. But without depositing the said amount the appeal was filed. Thereupon the Appellate Deputy Commissioner issued a check memo requesting to deposit 12.5% of the disputed tax with a threat and action to reject the appeal.

3. Aggrieved by the said check memo, the petitioner approached the 3rd respondent and filed an application seeking instalments to pay 12.5% of the disputed tax/penalty by invoking provisions under Section 22(6)(a) of AP VAT Act. But the 3rd respondent on receipt of the application dated 15.07.2013, without issuing any notice and without providing any opportunity for personal hearing after more than 2 months from the date of passing of the impugned order under challenge in the appeal and rejected the application for instalments so also the appeal. Thus, the order of the 3rd respondent is illegal and prayed to set aside the impugned order passed by the 3rd respondent dated 26.09.2013 and restore the appeal No. A/109/2013-14.

4. During the course of hearing, the counsel for the writ petitioner reiterated the contentions raised in the grounds of writ petition and whereas the Special Government Pleader for Sales Tax contended that Section 22(6)(a) of AP VAT Act is applicable only for payment of admitted tax or penalty but not in respect of deposit of 12.5% of the disputed tax to entertain an appeal. Therefore, no instalments be permitted to the petitioner and prayed to dismiss the writ petition.

5. Upon hearing the arguments of both the counsel at the stage of admission, we find that it is appropriate to dispose of the writ petition itself.

6. Considering the contentions of the petitioner and respondents, the point that arises for consideration is:

"Whether deposit of 12.5% of disputed tax is a precondition to entertain an appeal under AP VAT Act, if it is not complied whether the appeal is liable to be rejected"?

7. The facts are not in dispute but the question is whether deposit of 12.5% of disputed tax is necessary for entertaining or admitting an appeal at this stage. We feel that it is necessary to advert to refer Section 31 of AP VAT Act and according to proviso (2) therein the appellate authority shall not admit the appeal unless the dealer produces proof of payment of tax admitted to be due, or of such instalments as have been granted, and the proof of payment of twelve and half percent of the difference of the tax assessed by the authority prescribed and the tax admitted by the appellant, for the relevant tax period, in respect of which the appeal is preferred. Therefore, according to proviso (2) of Section 31 of AP VAT Act the appellant has to produce proof of payment of admitted tax due either in lump sum or in instalments so also deposit 12.5% of disputed tax/ penalty. Unless these 2 pre-conditions are complied, the appeal cannot be admitted under Section 31 of AP VAT Act. But the 3rd respondent dismissed the

application filed for seeking instalments without hearing the petitioner. Therefore, the present writ petition is filed challenging the said order.

8. In a judgment reported in Ranjit Impex Vs. Appellate Dy. Commissioner and Another, under TN VAT Act, the Apex Court discussed about pre-condition to entertain an appeal and held in Para No. 4 as follows:

"As far as the first issue is concerned, it is needless to say that the conclusion Arrived at by the Division Bench is absolutely justified, for a condition to entertain an appeal does not mean that the memorandum of appeal shall be returned because of such non-compliance pertaining to pre-deposit. The only consequence is that the appeal shall not be entertained which means the appeal shall not be considered on merits and eventually has to be dismissed on that ground."

9. The same principle can be applied to the present facts of the case for the reason that for admitting the appeal under proviso (2) to Section 31 of AP VAT Act, deposit of admitted tax due and deposit of 12.5% is a bar. So the 3rd respondent shall reject the appeal in toto if the deposit of 12.5% of the disputed tax was not made since it is a basic requirement to admit the appeal.

10. Therefore, in view of the principles laid down in the above judgment, we are of the considered view that the consequence for non-compliance is that the appeal shall not be entertained that means appeal shall not be considered on merits and shall be rejected on that ground alone.

11. There is a little distinction between language used under Section 51 of TN VAT Act and Section 31 of AP VAT Act. The word used is "entertain" in TN Act but in AP Act "admit". The language does not make much difference but when the appeal is filed without complying the pre-deposit which is condition precedent for entertaining an appeal or admitting an appeal under proviso (2) to Section 31 of AP VAT Act, the order supposed to be passed by the respondents is only to reject the appeal as a consequence of non-deposit.

12. In the instant case on hand, the petitioner sought for instalments under Section 22(6)(a) of AP VAT Act and it applies only for compliance of first requirement of the proviso i.e., payment of the admitted tax in instalments etc., if granted but not to the 2nd part of the proviso referred above regarding deposit of 12.5% of the disputed tax. Therefore, the 3rd respondent rightly rejected the application filed for grant of instalments and it does not call for interference of this order as we find no infirmity in the order.

13. While dismissing the application filed for grant of instalments, the 3rd respondent rejected the appeal as a consequence of non-compliance of pre-condition vide order dated 26.09.2013, therefore, strictly adhering to the principle laid down in the judgment referred supra the order passed by the 3rd respondent is totally in accordance with law and does not call for interference of this Court.

14. Accordingly, we find no merits in the writ petition to exercise the extraordinary power of judicial review conferred on this Court under Article 226 of Constitution of India. Consequently, the writ petition is deserves to be dismissed and the point held is in favour of the respondents and against the petitioner. In the result, the writ petition is dismissed. No order as to costs.