(2014) 08 AP CK 0022

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 40 of 2014

State of Andhra Pradesh — APPELLANT

Vs

Beardsell Limited — RESPONDENT

Date of Decision : 11-08-2014

Acts Referred:

Citation : (2014) 76 VST 239

Hon'ble Judges : Ramesh Ranganathan, J;M. Satyanarayana Murthy, J

Bench : Division Bench

Advocate : P. Balaji Varma, Special Standing Counsel, Advocate for the Appellant; S. Dwarakanath, Advocate for the Respondent

Judgement

Ramesh Ranganathan, J.—This revision is preferred against the order passed by the Sales Tax Appellate Tribunal in T.A. No. 117 of 2010 dated September 30, 2013. The respondent herein is a registered dealer on the rolls of Commercial Tax Officer, Marredpally Circle, Secunderabad. They are manufacturers of thermo frost. They carry on business of trading in electrical goods and chemicals, and execute works contracts. For the year 1998-99 (APGST), the petitioner was assessed on January 8, 2001 on a gross turnover of Rs. 6,23,78,877 allowing certain exemptions, and were assessed on a net turnover of Rs. 2,36,83,659. Thereafter the assessing authority, on a perusal of the records, was of the view that the respondent herein was eligible only for deduction on profits earned by the contractor relatable to labour, and overheads were not admissible deductions. He, therefore, proposed to assess the respondent herein under section 5F of the APGST Act. He issued a notice, proposing to revise the assessment order, under section 14(4) of the APGST Act. The respondent filed their objections to the said notice. The assessing authority, however, overruled the objections, confirmed the levy of tax, and passed a final assessment order, for the year 1998-99, on April 21, 2004. Aggrieved thereby, the respondent preferred an appeal before the Appellate Deputy Commissioner (CT) who, by order dated January 29, 2005, allowed the appeal. In his order dated January 29, 2005 the Appellate Deputy

Commissioner, relying on the judgment of this court in Girdharlal and Company Vs. State of Andhra Pradesh, , held that the assessing authority could not revise the assessment order without there being any fresh material de hors the records.

2. The Additional Commissioner (CT) (Legal), exercising powers under section 20(2) of the APGST Act, sought to revise the order of the Appellate Deputy Commissioner on the ground that the said order was prejudicial to the interests of Revenue. A show-cause notice was issued to the respondent on April 4, 2008. Objections were filed thereto on September 22, 2008. The revisional authority, by order dated November 28, 2008, set aside the order of the Appellate Deputy Commissioner, and restored the revision order passed by the Commercial Tax Officer dated April 21, 2004. The jurisdiction of the assessing authority to revise the assessment order, in the exercise of his powers under section 14(4) of the APGST Act, based on the original material on the record was not even dealt with by the Additional Commissioner in his order-dated November 28, 2008.

3. Before the Tribunal the respondent herein referred not only to the judgments in Girdharlal and Company Vs. State of Andhra Pradesh, , but also to other decisions of this court in (1) State of Andhra Pradesh Vs. Kedia Vanaspati (P) Ltd., , (2) Sri Ramanjaneya Groundnut Factory Vs. C.T.O. Kadiri and Another, , (3) Western India Gunnies Private Limited Vs. State of Andhra Pradesh and Another, and (4) Kanakadurga Manure Works Vs. State of Andhra Pradesh, . The Tribunal, having noted the said contentions, decided the appeal in favour of the respondent herein on merits.

4. Sri P. Balaji Varma, learned Special Standing Counsel for Commercial Taxes, would submit that the power to revise an order, passed by the assessing authority under section 14(4) of the Act, is not barred under section 20(2) of the APGST Act; such exercise of the power of revision cannot be said to be a second revision; and the order of the Tribunal, in so holding, is illegal. On the other hand Sri S. Dwarakanath, learned counsel for the respondent-assessee, would submit that, as the order of the assessing authority dated April 21, 2004 passed in the exercise of his powers under section 14(4) of the APGST Act was not based on any fresh material, such exercise of power is without jurisdiction; the Appellate Deputy Commissioner had relied on a judgment of this court in holding the order dated April 21, 2004 to be without jurisdiction; while the Additional Commissioner could have exercised his powers of revision under section 20(2) of the APGST Act to revise the original assessment order dated January 8, 2001, he could not have revised the order of the Appellate Deputy Commissioner setting aside the order of the assessing authority dated April 21, 2004; the power of revision under section 20(2) can be exercised only within four years as is stipulated under section 20(3) of the APGST Act; the Additional Commissioner had exercised his revisional powers by issuing a notice only on April 4, 2008, long after the period of limitation of four years had expired; and, even though the Tribunal has not dealt with this issue, the order of the Additional Commissioner is liable to be set aside on this ground.

5. Sri P. Balaji Varma, learned Special Standing Counsel for Commercial Taxes, would fairly state that the order passed by the assessing authority on April 21, 2004, in the exercise of his powers under section 14(4) of the APGST Act, is based on existing material and not on fresh material; and the order dated April 21, 2004 falls foul of the several judgments of this court referred to hereinabove.

6. The order of the Appellate Deputy Commissioner dated January 29, 2005 cannot be faulted as he had merely followed the law laid down by this court in Girdharlal and Company Vs. State of Andhra Pradesh, . The Additional Commissioner, while revising the said order, has not even dealt with this aspect. While the Tribunal has decided the appeal on its merits, the fact remains that the assessing authority could not have exercised his powers under section 14(4) on existing material, and the revisional authority could not have revised the original assessment order dated January 8, 2001 more than six years thereafter. We see no reason, therefore, to interfere with the order of the Tribunal, in setting aside the order of the Additional Commissioner (CT) dated November 28, 2008, albeit for reasons other than those referred to in the order of the Tribunal. It is wholly unnecessary for this court, therefore, to examine the question whether or not the order passed by the revisional authority, under section 20(2) of the APGST Act, is a second revision. The tax revision case fails and is, accordingly, dismissed. Pending miscellaneous petitions in this case, if any, shall stand dismissed in consequence. No order as to costs.