(2014) 06 AP CK 0024

In the Andhra Pradesh High Court

Case No : Writ Petition Nos. 10855 and 10960 of 2014

Triveni Poly Plast Pvt. Ltd. APPELLANT

Vs

The Commercial Tax Officer RESPONDENT

Date of Decision : 09-06-2014

Acts Referred:

Andhra Pradesh Value Added Tax Act, 2005 — Section 13, 21, 21(4), 53(3)

Citation : (2014) 58 APSTJ 277

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

Bench : Division Bench

Advocate : G. Narendra Chetty, Advocate for the Appellant

Judgement

Ashutosh Mohunta, J.—Since both the writ petitions are interrelated they were heard together and are being disposed of by this common order. Writ Petition No. 10855 of 2014 is filed impugning assessment order dated 03-12-2013 passed in proceedings AAO: 56923-RC.No. 19/2013-14/28200148339 by the Commercial Tax Officer, Begumpet Circle, Hyderabad, the 1st respondent herein relating to the tax period 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14 (up to September, 2013); whereas Writ Petition No. 10960 of 2014 is filed impugning penalty order dated 21-12-2013 passed in AAO:59591 by the 1st respondent relating to the tax period 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14 (up to September, 2013).

2. The petitioner in both the writ petitions is a registered dealer on the rolls of the Commercial Tax Officer, Ramgopalpet Circle, the 2nd respondents under the Andhra Pradesh Value Added Tax Act, 2005 (for short the AP VAT Act). The petitioner states that it purchases raw material from local VAT registered dealers by paying tax to them and manufactures and sells finished products namely HDPE Pipes and that it is regularly filing its returns claiming set off of input tax credit i.e., tax paid on the raw materials as it is eligible for the same under Section 13 and paying the tax due as per its returns to the 2nd respondent herein.

3. The 1st respondent upon authorization from the Deputy Commissioner (CT) is stated to have taken up audit of the petitioner for the tax period 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14 (up to September, 2013) and issued notice asking the petitioner to produce its books of accounts for which the petitioner sought time. It is the case of the petitioner that due to litigation with the landlord which ended in granting time to it for vacating the premises, it could not look after the business and could not produce the books of accounts as directed by the 1st respondent.

4. The 1st respondent without service of any show cause notice in Form 305A as required under the rules, issued the impugned assessment order by disallowing the input tax credit on the ground that the petitioner failed to produce the books of accounts, purchase bills etc., in response to his notice. The 1st respondent is stated to have included input tax credit amount of Rs. 4,00,593 and output tax amount of Rs. 3,67,840 which includes tax of Rs. 53,461/- alleged to have not been paid by the petitioner on exempted sales. According to the petitioner, the 1st respondent cannot demand both input tax and output tax and that if the input tax is disallowed, then only output tax can be demanded. The 1st respondent also passed the penalty order imposing penalty equal to tax under Section 53(3) of the AP VAT Act. As stated supra, both the assessment order and the penalty order are under challenge in these writ petitions.

5. Learned counsel for the petitioner contended that no show cause notice was served upon the petitioner as required under Rule 64(b) of the Andhra Pradesh Value Added Tax Rules, 2005 and in fact the speed post sent by the 1st respondent was received by a worker but not the petitioner and the worker handed over the cover to the petitioner only recently. Therefore, the petitioner could not furnish the books of accounts, purchase bills etc., as required by the 1st respondent. In support of this contention, he relied on the order passed by this Court in Writ Petition No. 4112 of 2014, dated 18-02-2014 wherein, in similar and identical circumstances, it was held that receipt of notice sent by the assessing authority by the wife of the owner of the petitioner company was not a valid service under Rule 64(b) of the AP VAT Rules.

6. Learned counsel for the petitioner further contended that the impugned assessment order insofar as it relates to the period from April 2009 to October, 2009 is barred by limitation under Section 21(4) of the AP VAT Act since the assessing authority is empowered to make the assessment within a period of four years from the end of the period from which the assessment is made. In support of his contention, he relied on the judgment of this Court in Gunisetty China Gunna Raju Traders Vs. Commercial Tax Officer, Chinawaltair Circle, wherein assessment order which was barred by limitation for part of the period was set aside leaving it open to the assessing authority to initiate fresh proceedings insofar as the assessment for the period which was having limitation is concerned. Since the impugned assessment order is liable to be set aside, the consequential penalty order is also liable to be set aside.

7. Per contra, the learned Government Pleader for Commercial Taxes contended that even though sufficient time was granted to produce the books of accounts, the petitioner did not produce the same and, therefore, the 1st respondent was justified in passing the impugned assessment order as well as the penalty order.

8. Perused the record.

9. It is the specific case of the petitioner that notice as required under Rule 64(b) of the Rules is not served. Under Rule 64(b) of the AP VAT Rules, notice is considered to have been served if (i) it is personally served on the nominated person; (ii) if it is left at the registered office of the person or the person''s address for service of notices under the AP VAT Act; (iii) it is left at or sent by registered post to any office or place of business of that person in the State or (iv) where it is returned un-served, if it is put on board in the office of the local chamber of commerce or traders association.

10. In the impugned assessment order dated 03-12-2013, insofar as service of show cause notice on the petitioner is concerned, the 1st respondent observed as under:

"Accordingly a show cause notice was issued in Form VAT 305A DT: 31-10-2013 inviting their written objections, if any, against the proposed assessment and levy of tax through speed post vide EN419402735IN dated: 01.01.2013 to the address of M/s. Triveni Poly Plast Pvt Ltd., Shop No. 29 & 30, A-Block, Ground Floor, Al-Karim Trade Centre, Ranigunj, Secunderabad which was returned an endorsement by the postal department as "NOT CLAIMED RETURN TO SENDER" and the same notice was issued through speed post EN419402713IN on 01.11.2013 and served on 04.11.2013 to the address of M/s. Triveni Poly Plast Pvt. Ltd., Factor at: Shed No. 40, IDA Mallapur, Hyderabad - 501 507."

11. A perusal of the impugned assessment order makes it clear that show cause notice was issued in Form VAT 305A, dated 31-10-2013 inviting written objections, if any against the proposed assessment and was served on the petitioner under Rule 64(b) of the Rules.

12. In the circumstances, the contention of the petitioner that notice as required under Rule 64(b) of the Rules is not served is liable to be rejected and it is accordingly rejected. The order of this Court in Writ Petition No. 4112 of 2014, dated 18-02-2014 is not applicable to the case on hand since in the present case notice was sent to the address of the petitioner but not personally served on any person other than the petitioner.

13. The other contention of the petitioner is that the impugned assessment order insofar as it relates to the period from April 2009 to October, 2009 is barred by limitation under Section 21(4) of the AP VAT Act since the assessing authority is empowered to make the assessment within a period of four years from the end of the period from which the assessment is made. In Gunisetty China Gunna Raju Traders'' case (supra) upon which reliance is placed by the learned counsel for

the petitioner, this court observed as under:

"As per sub-section (4) of Section 21 of the Act, the competent authority is empowered to make the assessment within a period of four years from the end of the period from which the assessment is made.

Though no counter affidavit is filed on behalf of the respondents, it is fairly conceded by the learned Special Government Pleader for Commercial Taxes that the assessment from April 2005 to May, 2009 is beyond the period of four years mentioned under Section 21(4) of the Act.

In the facts and circumstances, the impugned assessment for the period from April 2005 to May, 2009 is hereby declared as illegal as barred by limitation. Accordingly, the impugned order is set aside and it is left open to the 1st respondent to initiate fresh proceedings so far as the assessment for the period from June, 2009 onwards and to pass an appropriate order following due process of law."

14. This Court in the judgment referred to above held that since under sub-section (4) of Section 21 of the Act, the competent authority is empowered to make the assessment within a period of four years from the end of the period from which the assessment is made, the contention of the petitioner in regard thereto is substantiated in the eye of law.

15. Following the order of this Court referred to above, it is held that the impugned order insofar as it relates to the period from April 2009 to October, 2009 is barred by limitation under Section 21(4) of the AP VAT Act and accordingly the same is set aside. However, the 1st respondent - assessing authority is at liberty to initiate fresh proceedings so far as the assessment for the period from November, 2009 onwards is concerned and pass appropriate orders in accordance with law. Consequently, the impugned penalty order is also set aside. The writ petitions are accordingly allowed to the extent indicated above. Miscellaneous applications pending, if any, in both the writ petitions shall stand closed. No order as to costs.

