20/9/14

PROCEEDINGS OF THE APPELLATE DY. COMMISSIONER(CT), PUNJAGUTTA DIVISION, HYDERABAD

PRESENT: SRI U. SREENIVASULU, M.Sc(Ag).,

ADC Order No.373 Date of hearing:01-09-2014
Appeal No.BV/30/2013-14 Date of order :04-09-2014

1. Name and address of the Appellant.	:	M/s Summit Builders, Secunderabad.
2. Name & designation of the Assessing Authority.	:	Commercial Tax Officer, M.G.Road Circle, Hyd.
3. No.,Year & Date of order	:	TIN No.28790571789,dt.31-03-12 (2006-07 / Tax)
4. Date of service of order	:	12-04-2012
5. Date of filing of appeal	:	11-05-2012
6. Turnover determined by The Assessing Authority	:	-
7. If turnover is disputed:		
(a) Disputed turnover	:	-
(b) Tax on disputed turnover	:	₹1,33,422/-
8. If rate of tax disputed:		
(a) Turnover involved	:	-
(b) Amount of tax disputed	:	-
9. Amount of relief claimed	:	₹1,33,422/-
10. Amount of relief granted	:	REMANDED
11. Represented by	:	Sri M. Ramachandra Murthy, Chartered Accountant

NOTE: An appeal against this order lies before the Sales Tax Appellate Tribunal, Hyderabad within (60) days from the date of receipt of this order:

ORDER

M/s Summit Builders, Secunderabad, the appellant herein, is a registered dealer under the APVAT Act and an assessee on the rolls of

Commercial Tax Officer, M.G.Road Circle, Hyderabad (hereinafter referred to as the Assessing Authority). The present appeal is filed against the Assessment of Value Added Tax dated 31-03-2012 made by the Assessing Authority for the tax periods falling under the year 2006-07, disputing the levy of tax amounting to ₹1,33,422/-.

Sri M. Ramachandra Murthy, Chartered Accountant and Authorised Representative of the appellant appeared and argued the case. While reiterating the contentions as set-forth in the grounds of appeal with regard to the merits of the case, the Authorised Representative, during the course of personal hearing, mainly contended that the impugned order passed by the Assessing Authority is lack of jurisdiction as there was no separate authorization obtained by the Assessing Authority for making such an assessment and as such the same amounts to without jurisdiction. In this context, placing reliance in a decision rendered by the Honourable High Court of Andhra Pradesh in the case of M/s Balaji Flour Mills & Others (52 APSTJ 85), the Authorised Representative pleaded for setting-aside of the impugned orders.

I have heard the Authorised Representative and gone through his contentions as well as the contents of the impugned orders. In the impugned orders, the Assessing Authority observed that upon verification of the records of the appellant and also verification of the information obtained from the other Government Departments of Andhra Pradesh, issued a show cause notice proposing to levy output tax on certain of the turnovers. On an observation that in response to the show cause notice issued, there was no response from the appellant, the Assessing Authority confirmed the levy as proposed. Though the appellant in the grounds of appeal raised certain contentions with regard to the merits of the case, without going into the correctness of the findings of the Assessing Authority as made in the impugned orders of assessment and the assailment made by the Authorised Representative on merits, I have to observe that in the case of M/s Balaji Flour Mills & Others (52 APSTJ 85) as relied upon by the appellant and the Authorised Representative, the Honourable High Court of Andhra Pradesh, after discussing similar issue and while granting relief to the Petitioners therein, has observed and held as under:

> "(a) In the result, in the analysis and for the reasons as above, we reject the relief to declare Rule 59(1)(4)(ii)(b) and (d) of the VAT Rules as ultra vires We also declare that sub-sections (3) and (4) of Section 17 do not suffer from any constitutional infirmity and are valid. We also reject all other prayers for declaring the impugned rule and impugned

assessment orders as ultra vires or invalid except to the extent indicated in (b) and (c) below:

(b) In view of our holding that the authorization to audit under Section 43 read with Rule 59(1)(7) by itself does not enable audit officer to undertake assessment, we set aside all the assessment orders and consequential orders, if any under Section 53 of the VAT Act, in all the writ petitions;

(c) All the impugned assessment orders shall stand remitted to the respective audit officers who shall submit audit reports as contemplated under Chapter VII of the VAT Audit Manual for appropriate Post Audit Action. If the competent controlling and / or supervising authority like Deputy Commissioner issues separate orders authorizing assessment, it shall be open to such authorizing officer or authority prescribed, as the case may be, to undertake assessment in accordance with law;"

Further, in the case of M/s Dekars Fire & Security Systems (P) Limited & Others (53 APSTJ 45), the Honourable High Court of Andhra Pradesh referring to their own judgment in the case of M/s Balaji Flour Mills & Others, set-aside the assessments and penalties as well as orders for payment of interest made therein, with the direction to submit the reports to the Deputy Commissioner for appropriate action in accordance with judgment in the case of M/s. Balaji Flour Mills.

In the case on hand, the Assessing Authority did not bring on record that there was an authorization to make an assessment. Such being the case, when the impugned orders passed by the Assessing Authority are viewed in the light of the decision rendered by the Honourable High Court of Andhra Pradesh referred to above, the impugned orders cannot be upheld in law.

As the Authorised Representative sought to mainly contend on the issue of lack of jurisdiction in passing the impugned orders relying on the decision of the Honourable High Court of Andhra Pradesh (52 APSTJ 85); in the light of the discussion made above and without going into the merits of the case, I feel it would meet the ends of justice in directing the Audit Officer to submit audit report to the Deputy Commissioner(CT), Begumpet Division for further necessary action and to issue separate orders duly authorizing to take up assessment proceedings. The authority / officer so authorized by the Deputy Commissioner(CT),

Begumpet Division shall pass fresh orders in accordance with the provisions of law. Accordingly, the impugned order is set aside on the disputed tax amount of ₹1,33,422/- and the appeal thereon is remanded.

In the end, the appeal is remanded.

4/9/14

APPELLATE DEPUTY COMMISSIONER(CT),
PUNJAGUTTA DIVISION, HYDERABAD.

4/9/14

To
The Appellants.
Copy to the Commercial Tax Officer, M.G.Road Circle, Hyderabad.
Copy to the Deputy Commissioner(CT), Begumpet Division, Hyderabad.
Copy submitted to the Additional Commissioner(CT) Legal, and Joint Commissioner(CT), Legal, Hyderabad.