

***HON'BLE Ms. JUSTICE G. ROHINI**

AND

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

+WRIT PETITION Nos.16379 OF 2013

AND

15829 OF 2013

%08.08.2012

M/s. Saipem (Portugal) Commercial Maritimo S.U.Lda, 709, MIEQW,
wQH4 plqaq Complex, MUMBAI.

..... PETITIONER

AND

The Commercial Tax Officer, Kakinada and others

.....RESPONDENTS

! Counsel for the Petitioners: Sri Bhaskar Reddy Vemireddy

^ Counsel for respondents : Sri P. Balaji Varma, Spl. SC for CT

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? Cases referred:

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COMMON ORDER: (per Hon'ble Sri Justice Challa Kodanda Ram)

Aggrieved by the order dated 19.03.2013 passed by the 2nd respondent/Appellate Deputy Commissioner (CT), Visakhapatnam, the present writ petitions are filed.

2. As per the averments in the affidavit filed in support of the writ petition, the petitioner is a Portugal company having its project office at Mumbai and is a dealer registered under the Provisions of Indian Companies Act and is a registered dealer under the A.P.G.S.T Act, 1957 as well as C.S.T Act, 1956 and is an assessee on the rolls of the 1st respondent herein. The petitioner is engaged in the business of drilling, testing and abandoning of off shore wells. The petitioner was assessed by an order dated 20.06.2007 on a turnover of Rs.56,56,33,774/- towards transfer of right to use goods and Rs.1,39,72,848/- towards transfer of property in goods during the execution of works contract. Petitioner filed appeals before the 2nd respondent and the 2nd respondent by order dated 26.2.2008 partly allowed the appeal and remanded the matter in part to the 1st respondent. In the said order, the contention with regard to turnover of Rs.56,56,33,774/- representing any transfer of right to use goods was rejected but the said turnover was exempted from tax on the alternative ground of same filing within Section 5(2) of the C.S.T Act as sale in the course of import. So far as turnover of Rs.1,39,72,848/- is concerned, the assessment was set aside and the matter

was remanded back to the 1st respondent with the following observations:-

“a. Goods imported from out side the country and used for self consumption by the appellate cannot be taxed in the hands of the appellant.

b. Goods imported from out side the country and supplied to GSPC for which consideration is received is sale in the course of import and so cannot fall for levy if the transactions satisfy statutory requirements under Section 5(2) of CST Act.

c. Goods purchased from out side the State and from within the State but supplied to GSPC for which payment is received fell for levy in the hands of the appellant as first sales in the State.

d. Wherever amounts are received not involving supply of goods but received for services rendered by the appellant as contemplated under the contract there cannot be levy in the hands of the appellant.

I, therefore, set aside the assessments on the disputed turnovers and remand to the assessing authority. The assessing authority shall quantify the amounts under each of the above categories and grant exemption/levy tax as directed supra.”

3. Though the 2nd respondent passed order remanding the matter to the 1st respondent by his order dated 26.2.2008, the petitioner thereafter received no notice whatsoever from the 1st respondent and no orders as such were passed thereafter. As a matter of fact, under Section 24A of A.P.G.S.T Act, the 1st respondent could pass orders consequent to the remand orders of the 2nd respondent dated 26.2.2008 within three years from the date of receipt of the order of the 2nd respondent.

4. Petitioner received a notice dated 16.10.2008 from the 3rd respondent whereunder 3rd respondent proposed to revise the order of the 2nd respondent dated 26.2.2008 with respect to turnover of Rs.56,56,33,774/-

which was treated as a transaction under Section 5(2) of the C.S.T Act. In the said notice, there was no proposal to revise the orders of the 2nd respondent so far as the turnover of Rs.1,39,72,848/- which was remanded to the 1st respondent with directions as set out in the preceding paragraphs. By order dated 25.2.2012 the 3rd respondent reversed the decision of the 2nd respondent with respect to turnover of Rs.56,56,33,774/- only and there was no mention about the turnover of Rs.1,39,72,848/-. As against the order of the 3rd respondent dated 25.2.2012, an appeal is filed before the Sales Tax Appellate Tribunal and the same is pending adjudication.

5. Petitioner received a demand notice dated 15.3.2012 whereunder tax was demanded from the 1st respondent on the turnover of Rs.1,39,72,848/-. This order was purporting to have been passed as a consequential order pursuant to the orders of the 3rd respondent dated 25.2.2012. Petitioner filed appeal before the 2nd respondent bringing to his notice that the order dated 15.3.2012 is hopelessly time barred inasmuch as the original demand order of the 2nd respondent is dated 26.2.2008 and the limitation for passing consequential order under Section 24A of A.P.G.S.T Act, 1957 expired by February, 2011 itself and further the order dated 25.2.2012 of the 2nd respondent which has not dealt with the turnover of Rs.1,39,72,848/- cannot be the basis for the purpose of limitation. However, the 2nd respondent had rejected the said contention.

6. A counter-affidavit has been filed by the 1st respondent in which the order impugned as having been time barred has not been categorically

denied. In the counter-affidavit, the contention of the 1st respondent is to the effect that the petitioner ought to have approached the appellate authority and ought to have availed the alternative remedy of filing appeal.

7. The learned counsel for the petitioner had relied on the judgment of the Division Bench of this Court reported in **Murugan Cold Storage Private Limited, Chittoor & another vs. Commercial Tax Officer, Chittoor and others (APHC)** whereunder it has been held that the limitation prescribed under Section 24A of A.P.G.S.T Act, 1957 is 3 years from the date of remand by the appellate or revisional authority. In the light of the law laid down by the Division Bench of this Court and in the facts of the case where it is virtually admitted that the impugned order dated 19.3.2013 is time barred and as such is liable to be set aside.

8. W.P.No.15829 of 2013 relates to the assessment for the year 2005-2006 under A.P. VAT Act, 2005 with respect to the petitioner. In this case, original assessment order was passed on 19.6.2007 and the order dated 26.2.2008 passed by the Deputy Commissioner, which was served on the C.T.O in the month of February, 2008. The Joint Commissioner who is the 3rd respondent made the revised order on 16.10.2008 and the revision order finally was passed on 25.2.2012. The disputed turnover of Rs.9,19,98,100/- was not the subject matter in the revision order passed by the 3rd respondent on 25.2.2012. The 2nd respondent in its order dated 25.2.2008 had remanded the case for reassessment with respect to the turnover of Rs.9,19,98,100/- and after remand there was no consequential order passed. For the first time, the consequential order was sought to be passed on 15.3.2012 which was

appealed to the 2nd respondent who rejected the submission that the assessment as barred on the ground of limitation by order dated 19.3.2013. In this case also in the counter-affidavit, there was no denial with respect to the impugned order having become time barred.

9. For the reasons set out by us with respect to the assessment year 2004-05 under A.P.G.S.T Act even with respect to orders passed under Section 37 of A.P.VAT Act as the prescribed period of limitation is 3 years, the order dated 19.3.2013 passed under A.P. VAT Act also is liable to be set aside.

10. Accordingly, both the writ petitions are allowed setting aside the impugned order dated 19.03.2013 of the 3rd respondent confirming the order dated 15.3.2012 sofar as they relate to turnover of Rs.1,39,72,848/- and Rs.9,19,98,100/- respectively. No order as to costs. Miscellaneous Petitions, if any, pending in these wit petitions, shall stand closed.

G. ROHINI, J

CHALLA KODANDA RAM, J

Date:08.08.2013.

Note:

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