APHC010460272023

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3488]**
(Special Original Jurisdiction)

WEDNESDAY, THE SEVENTH DAY OF AUGUST
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE HARINATH.N

WRIT PETITION Nos.23966, 19619, 19620, 19765, 19907, 20468, 20801, 20972, 21385, 22175, 22361, 22383, 22980, 23728, 24253, 26480, 26816, 26847, 33350, 33354 & 33387 of 2023 and 1453, 1454, 2985, 13715 & 13781 of 2024

Between:

Sri Srinivasa Rice Mill **...PETITIONER**

AND

Commercial Tax Officer and Others **...RESPONDENT(S)**

Counsel for the Petitioner:

1. SRINIVASA RAO KUDUPUDI

Counsel for the Respondent(S):

1. P HEMA CHANDRA (SC FOR CIVIL SUPPLIES CORP LTD)
2. GP FOR COMMERCIAL TAX

The Court made the following Common Order:*(per Hon'ble Sri Justice* R. Raghunandan Rao*)*

All these Writ Petitions are being disposed of by way of this Common Order as they raise similar questions of fact and law.

2. Heard Sri S. Dwaraknath, learned Senior Counsel appearing on behalf of Sri Srinivasa Rao Kudapudi, learned counsel for the petitioners and the learned Government Pleader for Commercial Tax.

3. The petitioners, in all these cases are rice millers who are involved in the business of milling of rice and selling the said rice and broken rice to persons within the State and outside the State. They are registered under the Central Sales Tax, Act 1956 [for the "the CST, Act"]. The sales, in the present set of Writ Petitions, relate to sales undertaken under the CST, Act. The normal rate of tax payable by a dealer selling goods under the CST, Act would be 4/5% (The rate of 4% was increased to 5% on 15.09.2011). However, the dealers are permitted to pay tax, under the CST, Act, at a concessional rate of 2% if they were able to produce C-Forms issued by their purchasers affirming that the said goods would either be consumed by the purchasers or would be resold by the purchasers in their respective States.

4. A large number of rice millers and persons dealing with rice had represented to the Government that they were facing immense difficulties in obtaining C-Forms from their purchasers in other States as some of the States had exempted the purchase of sale of rice from tax etc. The Government, after considering such representations had issued a series of memos waiving

payment of tax at the full rate and permitting payment of tax at the rate of 2%, even in cases where necessary C-Forms was not produced before the assessing officers. The Government, had initially issued a Memo.No.26197/CT-II(1)/2013, dated 10.05.2016. The relevant paragraph No.2 of the said memo reads as follows:-

> *"Paragraph No.2:-Government, after careful consideration of the request and in pursuance of the resolution of the Council of Ministers in the reference 4th cited, hereby order to waive the tax payable under CST Act over and above 2% in the absence of C-Forms till 31.05.2014, only for those Rice Millers and dealers in Pulses & Dalls, who remit the tax completely as per the provisions of the CST Act for the period from 01.06.2014 to 31.12.2015 before 30.06.2016 after getting their assessments completed expeditiously. The waiver shall be subject to production of Lorry Receipts/Railway Receipts, CST way bills, proof of exit through the last notified check-post in Andhra Pradesh and proof of receipt of sale consideration from the buyers to prove that the goods were sold to the dealers in other states in the course of inter-state trade. The waiver is not applicable to those Rice Millers and dealers in Pulses & Dalls who have defaulted in payment of even 2% tax. Taxes already paid shall not be refunded under any circumstances."*

5. Subsequently, the Government of Andhra Pradesh again issued Memo No.26197/CT-II(1)/2013, dated 27.09.2016, wherein the terms and conditions for grant of waiver were set out. The relevant part of the said memo reads as follows:

> *"Considering their representations and in pursuance of Resolution No.693/2016, Dt.24.08.2016 of the Council of Ministers, Government, in partial modification of the terms and conditions set out in the waiver orders issued in the reference 5th cited, hereby order to waive the tax payable under the Central Sales Tax (CST) Act over and above 2% in the absence of "C"-Forms by Rice Millers and the dealers in Pulses & Dalls till 31.05.2014, subject to the following terms and conditions:*
>
> *i) The waiver is applicable only to those dealers who remit the tax completely as per the provisions of the CST Act for the period from 01.06.2014 to 31.12.2015 before 31.12.2016 after getting their assessments completed.*
>
> *ii) The waiver shall be subject to production of lorry receipts/railway receipts and CST way bills.*
>
> *iii) The waiver shall also be subject to production of proof of exit through the last notified check-post in Andhra Pradesh or production of ledger account or day book entry relating to payment of charges for transporting the goods to other States.*

iv) The waiver shall not be applicable to those dealers who have defaulted in payment of even 2% tax.

v) Taxes already paid shall not be refunded under any circumstances."

6. The Government of Andhra Pradesh again issued a Memo.No.REV-35024/37/2016-CTII, dated 09.03.2017. Under this memo, the cutoff date for completion of assessments for the period from 01.06.2014 to 31.12.2015 was extended till 30.06.2017. The Government again issued another Memo No.REV-35024/3/2017-CT-II, dated 05.09.2018 extending the cutoff date from 30.06.2017 to 30.09.2018. These memos also stipulated that the terms and conditions set out in the memo dated 27.09.2016 shall remain applicable for obtaining waiver of tax.

7. The petitioners, herein, who are registered dealers with the Commercial Tax Officer, Ramachandrapuram Circle, Ramachandrapram, Commercial Tax Officer, Alcot Gardens Circle, Rajahmundry, Commercial Tax Officer, Jagannaickpur, Kakinada and Commercial Tax Officer, Mandapeta in East Godavari District had approached these tax officers for waiver. The applications for such waiver appear have to be made in the year-2019 onwards. The tax authorities had issued endorsements, which are impugned in the present set of Writ Petitions, rejecting these applications for waiver. The said orders of rejection were passed essentially on the following grounds:-

i. The assessments for the relevant period had already been completed more than four years prior to the date of endorsement and as such, the tax authority is not in a position to re-assess the tax as Rules 14(A) sub-rules 8, 9 & 15 of the Central Sales Tax (Andhra Pradesh) Rules, 1957 [for the short "the CSTAP Rules"] do not permit a re-assessment beyond four years.

ii. The petitioners would be eligible for waiver of tax only if all the necessary documentary evidence stipulated under the aforesaid memos were furnished before the last cutoff date on 30.09.2018, whereas the petitioners have submitted their documents from the year 2019 onwards, along with their applications for waiver and as such, the documents cannot be looked into by the taxing authorities and consequently, no waiver can be granted.

iii. In some of the cases, the taxing authorities also took the view that the necessary documents which are necessary for grant of waiver had not been filed.

8. These endorsements are set out in the table below:

Sl .No	Name of the Petitioner	Writ Petition Number	Assessment Years	Endorsement date
1	Veerabhadreswara Raw & Boiled RM_Polamuru	19620/2023	2012-13	07.07.2023
2	Sri Surya Modern Rice Mill_Komaripalem	19907/2023	2010-11 to 2014-15	21.07.2023
3	Sri Ayyappa Raw & Boiled RM_Polamuru	20468/2023	2011-12 to 2014-15	07.07.2023
4	Sri Veera venkata Satyanarayana RM	20972/2023	2011-12 to 2013-14	21.07.2023
5	Saiteja Food Products Pvt LtdTossipudi	23728/2023	2014-15	07.07.2023
6	Sri Venkateswara Rice Mill	26847/2023	2011-12 to 2013-14	04.08.2023
7	Janakirama Raw & Boiled Rice Mill	1453/2024	2014-15	04.07.2023
8	Janakirama Raw & Boiled Rice Mill	1454/2024	2010-11 to 2013-14	04.07.2023
9	Sri Vijayalakshmi Raw & Boiled RM_Nadakuduru	22383/2023	2011-12 to 2014-15	30.06.2023
10	Venkata Subrahmanyeswara _Raw &B_Velangi	22980/2023	2010-11 to 2013-14	04.07.2023
11	NSN Reddy Rice Industry _ chollangi	33350/2023	2011-12 to 2014-15	21.11.2023
12	Sri Lakshmi Satyanarayana RBRM, Penguduru	33354/2023	2011-12 to 2014-15	23.11.2023
13	Venkata Durga Rice Mill	33387/2023	2014-15	03.10.2023
14	ChintaSubbarayudu& others	2985/2024	2011-12 to 2013-14	27.01.2024
15	SVR Foods, Vemulapalli	19619/2023	2011-12 to 2014-15	19.06.2023
16	Srimannarayana Rice Industries_Yeditha	19765/2023	2011-12 to 2014-15	03.06.2023
17	Sri SriSri Satyanarayana Raw & BRM	20801/2023	2011-12 to 2014-15	19.06.2023
18	Krishna Teja Food Products	21385/2023	2011-12 to 2014-15	06.06.2023
19	Sri Surya Kanya Rice Mill _ Mandapeta	13781/2023	2012-13	30.06.2023
20	Nallamilli Venkata Krishna Reddy & others	13715/2023	2011-12 to 2014-15	24.05.2023
21	Hindustan Agro Products Ltd	26480/2023	2011-12 to 2013-14	30.05.2023
22	Chaitanya Rice Mill_Chelluru-Against ADC	22175/2023	2011-12 to 2013-14	24.05.2023
23	Lakshmi Ganapathi Rice Mill_Rayavaram	22361/2023	2011-12 to 2014-15	30.05.2023
24	Srinivasa Rice Mill_Rayavaram	23966/2023	2011-12 to 2014-15	30.05.2023
25	Sowbhagyalakshmi Raw & BRM_K. Gangavaram	24253/2023	2011-12 to 2014-15	05.06.2023
26	Sri Jayalakshmi RBRM	26816/2023	2011-12 to 2013-14	05.10.2023

9. Aggrieved by these endorsements, rejecting the applications for waiver, the petitioners have approached this Court, by way of the present set of Writ Petitions.

10. Sri S. Dwaraknath, learned Senior Counsel appearing on behalf of Sri Srinivasa Rao Kudapudi, learned counsel for the petitioners contends that the grounds relied upon by the taxing authorities for rejection of waiver are not tenable nor applicable to the present set of cases.

11. The learned Senior Counsel would draw the attention of this Court to the Rule-14(A) sub-rules (8),(9)&(15) of the CSTAP Rules. He contends that under Rule-14(A) sub-rule(8), the assessing authority, could re-assesses the tax due from a dealer, where such assessing authority finds that either the whole or part of the turnover of the business of the dealer has escaped assessment or has been under assessed; Rule-14(A) sub-rule (9) provides for re-assessment where a rate of tax, which is lower than the actual rate, has been applied during assessment; Rule-14(A) sub-rule (15) stipulates the period of re-assessment under the Rule-14(A) sub-rules (8) & (9).

12. The learned Senior Counsel would contend that the said rules permit an assessing authority to undertake re-assessment only where there is prejudice to the revenue of the State and such re-assessment is not permissible, under these provisions, where the dealer has a complaint against either assessment of the turnover or application of higher rate of tax. He would contend that in such circumstances the said ground does not arise at all.

13. It is further contended by the learned Senior Counsel that the approach of the taxing authorities was itself erroneous. He would submit that the question before the taxing authorities was not a case for re-assessment but a case forwaiver. The memos, extracted above, under which the waiver is sought would also make it clear that there was no necessity of re-assessment because the memos only speak of the waiver of tax already assessed.

14. The learned Senior Counsel would further contend, on the second ground raised by the taxing authorities, to reject the request of waiver, that the same is also not available. He would submit that the terms of the memos and more specifically memo dated 27.09.2016 had placed a cutoff date only in relation to completion of the assessment proceedings and for payment of tax before the cutoff date. He would point out that there is no cutoff date specified against the production of the lorry receipts/railway receipts etc., for obtaining of waiver of tax from the taxing authorities.

15. On the question of non-production of documents, necessary for grant of waiver, he submits that the necessary documents were placed before the taxing authorities. He would point out that in W.P.No.23966 of 2023, the rice was transported by rail and the rail receipts were produced. However, the taxing authority had contended that the request of the petitioner for waiver cannot be considered as lorry receipts were not produced.

16. The learned Government Pleader for Commercial Tax would submit that the correct reading of the memos would require the petitioners to

submit their applications for waiver before the cutoff date set out in the memos. He would further submit that once an assessment has been completed, the authorities would be entitle to recover the taxes assessed under the said assessment orders and any waiver would have to be incorporated into the assessment order by either re-assessment or by way of an appellate order. He would further submit that in the absence of such are assessment order or an appellate order, the claim of non-payment of amount due under the assessment orders cannot be accepted.

CONSIDERATION OF THE COURT:-

17. It is the admitted case on both sides that, the assessments required under the impugned memos had been completed before the cutoff date set out under these memos. In the light of this fact, the questions that remain, before this Court, are whether the petitioners can file their documents for obtaining waiver of tax, at a later date, and whether such waiver of tax can be given without any further assessment/re-assessment/appellate order being passed by the concerned taxing authorities.

18. In the normal course, dealers registered under the CST Act would be entitled to pay tax at the concessional rate of 2% only upon production of C-Forms. However, the memos issued by the Government, mentioned above, grant waiver of tax and permit the petitioners to pay tax at the concessional rate of 2%, even if such C forms are not submitted, subject to the said dealers fulfilling the conditions set out in the memos mentioned above.

19. The conditions for grant of such waiver are contained in the memo dated 27.09.2016 which has been extracted above. A perusal of the terms and conditions, in this memo, make it clear that the waiver of tax given under the memos, is applicable to those dealers who remit their tax completely as per the provisions of the CST, Act for the period from 01.06.2014 to 31.12.2015 before 30.09.2018; complete their assessment for the period from 01.06.2014 to 31.12.2015 before 30.09.2018; produce documents of movement of goods in the form of lorry receipts/railway receipts and CST waybills; production of proof of exit of the goods from the State Andhra Pradesh by producing proof of exit from the last notified check post in the State or by production of ledger accounts or book entries relating to payment of charges for transporting goods to other States.

20. In the aforesaid terms and conditions, a cutoff date is prescribed only in relation to payment of tax under the CST, Act and for completion of the assessment for the period from 01.06.2014 to 31.12.2015. There is no cutoff date prescribed for production of the other documents mentioned above. In the circumstances, the contention of the learned Government Pleader for Commercial Tax, that the documents required for grant of waiver should be produced before the cutoff date cannot be accepted.

21. The taxing authorities, as well as the learned Government Pleader for Commercial Tax, have taken the stand that waiver of tax can be given only by way of re-assessment and the same cannot be done as the

request for waiver has been submitted after the period of limitation for re-assessment had lapsed.

22. The first memo, issued on 10.05.2016 states that the Government had ordered waiver of tax payable under the CST, Act over and above 2% in the absences of C-Forms. This waiver was subject to production of certain documents, as mentioned above and completion of assessment. The condition that the assessment should be completed before waiver can be granted is significant. This would mean that the Government was envisaging a situation where the assessment has already been completed levying tax at the rate of 4/5%, on sales for which C-Forms had not been submitted, and to give waiver of payment of the assessed tax, wherever the dealers are able to produce necessary documents showing movement of the goods outside the borders of the State. This would obviously mean that no re-assessment or appellate orders would be required for grant of such waiver. This Court is of the view that the waiver granted by the Government would not require any re-assessment orders or appellate orders to be passed to give affect to the said wavier.

23. As far as the non-production of documents is concerned, the said non-production would be a question of fact, which would have to be gone into by the assessing authorities after considering whether the documents produced by the petitioners meet the terms and conditions set out in the memos.

24. The learned Government Pleader for Commercial Tax further contends that the applications are hit by laches as they are being filed with delay and without any explanation for such delay. He would contend that most of these applications were filed only in the year 2023 and as such, the petitioners cannot claim a vested right for wavier at any point of time even if the applications are filed three years after the issuance of the memos.

25. It appears that in quite a few cases the applications were filed in the year 2019 and thereafter, these requests were renewed in the year 2023. In such circumstances, it would be inequitable, to grant relief to those dealers who approached in the year 2019 while denying such relief to the dealers who approached later. In any event, the applications are only for the purposes of ascertaining the eligibility of the dealers/petitioners for grant of waiver.

26. In the circumstances, these Writ Petitions are disposed of with the following directions:-

1. The Endorsements issued by the respective tax authorities, which are set out in the table above, are set aside.
2. The respective tax authorities, shall consider the applications of the petitioners afresh and grant waiver to those petitioners who are able to comply with the requirements of the documents set out in the memos.
3. This exercise shall be completed within a period of two (2) months from the date of receipt of this Order.

4. No coercive steps shall be taken against any of the petitioners, on the basis of the earlier assessment orders, until a decision on the grant of waiver is completed.

There shall be no order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

R. RAGHUNANDAN RAO, J.

HARINATH.N, J.

BSM

HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

AND

HONOURABLE SRI JUSTICE HARINATH.N

WRIT PETITION Nos.23966, 19619, 19620, 19765, 19907, 20468, 20801, 20972, 21385, 22175, 22361, 22383, 22980, 23728, 24253, 26480, 26816, 26847, 33350, 33354 & 33387 of 2023 and 1453, 1454, 2985, 13715 & 13781 of 2024

(per Hon'ble Sri Justice R. Raghunandan Rao*)*

Date: 07.08.2024

BSM