

APHC010527082022



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

[3488]

**TUESDAY, THE SIXTEENTH DAY OF JULY
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE HARINATH.N

WRIT PETITION NO: 32097/2022

Between:

M/s. Mondelez India Foods Private Limited

...PETITIONER

AND

Commercial Tax Officer and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1. SRINIVASA RAO KUDUPUDI

Counsel for the Respondent(S):

1. GP FOR COMMERCIAL TAX

The Court made the following order: *(per Hon'ble Sri R Raghunandan Rao)*

The petitioner, who is a registered dealer under the Central Sales Tax Act, had sought exemption in relation to a turn-over amounting to Rs.1,52,97,49,938/- (Rupees One Hundred and Fifty Two Crores Ninety Seven Lakhs Forty Nine Thousand Nine Hundred and Thirty Eight Only) for the assessment year 2015-2016 and filed F Forms for obtaining such

exemption. However, it was found that a turn-over to an extent of Rs.2,05,37,776/- (Rupees Two Crores Five Lakhs Thirty Seven Thousand Seven Hundred and Seventy Six Only) was not covered by any F Forms. In view of this shortfall, the Assessing Officer added the turn-over of Rs.2,05,37,776/- (Rupees Two Crores Five Lakhs Thirty Seven Thousand Seven Hundred and Seventy Six Only) to the taxable turn-over and raised a demand of Rs.1,77,83,641/- (Rupees One Crore Seventy Seven Lakhs Eighty Three Thousand Six Hundred and Forty One Only), by way of an assessment order dated 28.12.2019. This order is said to have been sent to the e-mail ID of the petitioner.

2. It is the case of the petitioner that this e-mail order was not received by the petitioner, in as much as the e-mail ID to which the order had been sent, had become inactive and was not being used by the petitioner. It is further submitted that the officer who was operating the said e-mail ID had left the service of the petitioner and as such the petitioner was unaware of any order being sent to the said e-mail ID.

3. It is also the case of the petitioner that, being unaware of passing of the assessment order on 28.12.2019, he had been approaching the Office of the 1st respondent for completion of the assessments including the year

2015-2016 and was following up for obtaining refunds of tax arising out of the appeals and reassessment carried out at the behest of the petitioner.

4. The petitioner is said to have submitted a request for certain refunds in March 2021 and was following upon the same. At that stage, the petitioner is said to have been informed that the refunds were not available as the assessment for the year 2015-2016 had been completed on 28.12.2019, due to which all the refunds were adjusted against the demands raised in that year. Thereafter, the petitioner is said to have requested for a certified copy of the assessment order dated 28.12.2019, by way of a letter dated 30.06.2022. The petitioner contends that this request was denied due to which the petitioner could not file an appeal against the order dated 28.12.2019. The petitioner, contending that he had no alternative remedy, approached this Court by way of the present Writ Petition.

5. The contention of the petitioner is that the concerned F Forms relating to the disputed turn-over had been misplaced and could not be placed before the Assessing Officer in time. It is further contended that the lacunae or the defect in non-furnishing the F Forms can always be rectified by producing them before the Appellate Authority at the stage of the First Appeal or before the Sales Tax Appellate Tribunal at the stage of the Second Appeal and the same is permitted by virtue of the Judgment of Hon'ble Division Bench of the

erstwhile High Court of Andhra Pradesh reported in ***Godrej Agrovat Limited Vs. Commercial Tax Officer, Eluru, West Godavari District***¹. The petitioner contends that this right of the petitioner has been taken away on account of non-furnishing of the certified copy of the order required for filing the appeal. It is further contended that Rule 64 of the Andhra Pradesh Value Added Tax Rules, 2005 (for short, 'the Rules') which would be applicable to the assessments under the Central Sales Tax Act, 1956 also, did not provide for service of notice by sending an e-mail to the e-mail ID of a dealer and as no hard copy of the order had been served on the petitioner, there would still be time for the petitioner to be given a certified copy for filing of an appeal.

6. Sri Srinivasa Rao Kudupudi, learned counsel for petitioner would submit that the Hon'ble Division Bench of this Court in the erstwhile High Court of Andhra Pradesh in its order dated 12.03.2013 in W.P.No.7259 of 2013 and a Hon'ble Division Bench of this Court in its order dated 09.12.2020 in W.P.No.23217 of 2020, had held that service of notice of the order, by way of sending it by e-mail is not provided under Rule 64 of the Rules and as such the limitation for filing of an appeal would commence only after a hard copy is served physically on the dealer. He would submit that the facts in the present case also are similar and the ratio of these two Judgments would have to be applied in the present case.

¹ (2007) 7 VST 730 (AP)

7. The learned Government Pleader for Commercial Tax would submit that those two cases had interpreted the un-amended Rule 64 of the Rules which had been amended in 2016 to include service through e-mail as a valid and effective mode of service. He would submit that, in such circumstances, the aforesaid Judgments would not be applicable in view of the change in law.

8. A perusal of the facts would show that the period within which assessment for the year 2015-2016 would have been carried out ended on 31.03.2020. The assessment order is said to have been passed on 29.12.2019 and served through e-mail in June, 2020. The petitioner contends that the service of the order by e-mail is not proper service and in any event cannot be taken to have been served on the petitioner as the officer of the petitioner who was handling the e-mail ID had left the service of the petitioner and the e-mail ID had become inactive. In such circumstances, the petitioner contends that there should be a direction to the 1st respondent-Assessing Officer to serve the certified copy of the order of assessment dated 29.12.2019 and to permit the petitioner to file an appeal which would enable the petitioner to produce his F Form before the Appellate Authority.

9. Sri Srinivasa Rao Kudupudi, learned counsel for petitioner would also rely upon Rule 12 of the Central Sales Tax (Registration And Turnover)

Rules, 1957, to contend that Rule 12 (7) of these Rules provide that F Forms have to be filed within three months from the end of the period to which the F Forms would apply with a further provision to the Assessing Officer to permit filing of such F Forms at any point of time if the dealer is able to satisfy the Assessing Officer that the delay in filing the F Forms is supported by a sufficient cause. In the present case, the petitioner contends that the F Forms are available but were not filed on account of the inadvertence of the officers and on account of the said F Forms being misplaced in one of the branches.

10. The question before this Court is whether this Court can direct the 1st respondent- Assessing Authority to furnish a certified copy of the assessment order to enable the petitioner to file an appeal at this stage or whether the said filing of the appeal is now barred by limitation.

11. The period for passing the assessment order for the year 2015-2016 ended on 31.03.2020. The petitioner, which is a large Multi-National Company, cannot plead ignorance of the law or that the petitioner is awaiting an order despite the fact that the period for completing assessment had lapsed. Further, the contention, that the petitioner was under the impression that no demand was raised against the petitioner, cannot be accepted as such a conclusion could have been drawn only if an assessment order had been passed and served on the petitioner. The fact that the first step taken by the

petitioner for the purpose of filing was only in June, 2022 when an application was made for a certified copy of the assessment order also militates against the version set up by the petitioner.

12. The arguments that the service of the order by e-mail would not be proper service under Rule 64 of the Rules does not stand in view of the amendment to the said Rule. Further, the contention that service on the e-mail ID of the petitioner would not amount to proper service as the e-mail ID was inactive also cannot be accepted as it would be the duty of the petitioner to inform the Assessing Officer of any change in the e-mail ID.

13. In the circumstances, We do not find any reason to intervene or interfere in this case and the present Writ Petition is accordingly dismissed. There shall be no order as to costs.

As a sequel, interlocutory applications pending, if any shall stand closed.

R RAGHUNANDAN RAO, J

HARINATH.N, J

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THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE HARINATH.N

WRIT PETITION NO: 32097 of 2022

(per Hon'ble Sri R Raghunandan Rao)

16.07.2024

MJA