

APHC010920822017



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

[3508]

WEDNESDAY ,THE TWENTY SECOND DAY OF JANUARY
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

WRIT PETITION NOs: 7158/2018,10587/2016, 2514/2020, 6480/2020,
6597/2020, 3111/2021, 40351/2022, 40354/2022, 23960/2023 & 29854 of
2024

W.P.No.7158 of 2018

Between:

M/s. Mohan Spintex India 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 (AP)

The Court made the following order:

Heard Sri K.A. Siva Vara Prasad, Sri Kudupudi Srinivasa Rao, Sri G. Narendra Chetty and Sri SAV. Sai Kuma, the learned Assistant Government Pleader for Commercial taxes.

2. In all these cases, the petitioners have approached this Court being aggrieved by the refusal of the assessing authorities to receive 'H' Forms that were sought to be produce after the assessment proceedings had been completed.

3. The petitioners contend that there is no time limit for receipt of 'H' Forms, and that such 'H' Forms can be filed even after the assessment proceedings have been completed, in view of the Judgments of the erstwhile High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh and this Court in W.P.No.1466 of 2017 dated 24.01.2027, W.P.No.16718 of 2019 dated 30.10.2019, W.P.No.12450 of 2019 dated 07.10.2023 and W.P.No.18205 of 2020 and batch dated 11.09.2024.

4. In all these Judgments, the Division Bench, in each case, had taken the view that the Judgment of the erstwhile High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in the case of **M/s. Godrej Agrovet Ltd., China Pothapally & another vs. Commercial Tax Officer, Eluru & another**¹, relating to 'C' & 'F' forms and the time within the such 'C' & 'F' Forms can be filed would apply to the production and filing of 'H' Forms also.

5. In W.P.No.1466 of 2017, a Division Bench of the erstwhile High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh had held that 'H' Forms also should be accepted beyond the

¹ (2007) 007 VST 0730

period of assessment, as 'C' & 'F' Forms were being accepted in this manner by virtue of Rule 12(7) of the Central Sales Tax (R&T) Rules.

6. A Division Bench of this Court, by an order dated 07.10.2023, in W.P.No.12450 of 2019, following the said Judgment, had directed the receipt of 'H' Forms, on par with 'C & F'Forms.

7. Another Division Bench of this Court, by an order, dated 30.10.2019, in W.P.No.16718 of 2019, following the Judgment in W.P.No.1466 of 2017, and applying the decision of **M/s. Godrej Agrovet Ltd., China Pothapally & another vs. Commercial Tax Officer, Eluru & another** had held that 'H' Forms can be received, on par with 'C' Forms.

8. Another Division Bench of this Court, (in which one of us RRR,J was a member) had held that Rule 12(10)(b) of the CST (R&T) Rules stipulated that the terms applicable to production and filing of Form 'C' would *mutatis mutandis* apply to certificate in Form 'H'.

Rule 12(7) and Rule 12(10) of the CST (RNT) Rules read as follows:

Rule 12(7):

The declaration in Form 'C' or Form 'F' or the certificate in Form 'E-1' or Form 'E-II' shall be furnished to the prescribed authority within three months after the end of the period to which the declaration or the certificate relates :

Provided that if the prescribed authority is satisfied that the person concerned was prevented by sufficient cause from furnishing such declaration or certificate within the aforesaid time, that authority may allow

such declaration or certificate to be furnished within such further time as that authority may permit.

Rule 12(10)(b):

The provisions of the rules framed by the respective State Governments under sub-sections (3), (4) and (5) of Section 13 relating to the authority from whom and the conditions subject to which any form of certificate in Form 'H' may be obtained, the manner in which such form shall be kept in custody and records relating thereto maintained and the manner in which any such forms may be used and any such certificate may be furnished in so far as they apply to declaration in Form 'C' prescribed under these rules shall *mutatis mutandis* apply to certificate in Form 'H'.

9. Rule 12(7) states that 'C' forms or 'F' forms would have to be filed, before the prescribed authority, within three months after the end of the period to which the declaration or the certificate relates. However, the proviso to Rule 12(7) states that the prescribed authority could permit processing or filing of such declaration or certificate beyond the time set out in Rule 12(7), if sufficient cause is made out as to why the forms could not be filed within time. Interpreting this provision, a Division Bench of the erstwhile High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in **M/s. Godrej Agrovet Ltd., China Pothapally & another vs. Commercial Tax Officer, Eluru & another** had taken the view that the proviso extends the time for filing of Form 'C' or Form 'F', beyond the date of assessment and that the said forms could be taken into account, after due cause is shown, for the purpose of recalculating the tax liability arising out of the assessment order.

10. Under Rule 12(10) the declaration in Form 'H' can be furnished to the prescribed authority only up to the time of assessment by the first assessing authority. There is no proviso to this provision, akin to Rule 12(7) of the Rules. This would mean that the time frame set out under Rule 12(10) is absolute and there is no leeway for grant of any further time by the authority.

11. Rule 12(10)(b), which has already been extracted above, was understood by the earlier Division Bench in W.P.No.18205 of 2020 and batch to mean that the furnishing of declaration in Form 'H' can be done in the manner in which a declaration under Form 'C' can be filed even beyond the time of assessment.

12. However, a closer look at Rule 12(10)(b) shows that the said view may not be correct. Rule 12(10)(b) states that if any rules are made by the respective State Governments, relating to the filing of Form 'H', then the rules as they applied to the declaration in Form 'C', prescribed under the CST (R&T) Rules, would *mutatis mutandis* apply to filing of a certificate in Form 'H'.

13. The State of Andhra Pradesh has framed rules under the provisions of Section 13 titled Central Sales Tax (Andhra Pradesh) Rule, 1957. These rules do not provide for filing of Form 'H'. In the view of this Court, Rule 10 (b) would become applicable only when the State Government frames rules in relation to Form 'H'. In the absence of such rules, the provisions of Rule 12(10)(b) would not come into play.

14. The logical consequence of this interpretation would be that filing of Form 'H' would not be *mutatis mutandis* with the filing of Form 'C' and 'F'.

15. In view of the earlier Judgments of the Division Benches of this Court which are co-ordinate with this bench, it would only be appropriate that the matter is placed before the Hon'ble The Chief Justice for reference to a Full Bench to resolve this issue.

R RAGHUNANDAN RAO,J

MAHESWARA RAO KUNCHEAM,J

RJS