SUPREME COURT OF INDIA

S.E. Graphites Private Limited

Vs.

State of Telangana

C.A.No.7574 of 2014

(A.M.Khanwilkar and Ajay Rastogi,JJ.,)

10.07.2019

JUDGMENT

A.M.Khanwilkar,J.,

Civil Appeal Nos.7574/2014, 10433/2014, 2084/2015 and Civil Appeal No.5345 of 2019
(Arising out of S.L.P. (C) No.6880 of 2019)

1. Leave granted in SLP (C) No.6880 of 2019. led These Civil Appeals emanate from the orders passed by the ppellate Authority rejecting the appeal preferred by the concerned appellant(s) under the provisions of APGST Act, 1957 or AP VAT Act, 2005 or Telangana State VAT Act, 2005, as the case may be, on the ground that the appellant-assessee had failed to comply with the pre-condition of producing proof of payment of tax admitted to be due or of such installments as may have been granted and/or the proof of payment of twelve and a half percent (12.5%) of the difference of the tax assessed by the assessing authority and the tax admitted by the appellant for the relevant assessment year in respect of which the appeal has been preferred by the concerned appellant-assessee, warranting rejection of the appeal in terms of the second proviso of Section 19 and proviso of Section 21 (2) of the APGST Act, 1957 or second proviso of Section 31 and proviso of Section 33 (2) of the AP VAT Act, 2005. Similar position obtains regarding the provisions of Telangana State enactments.

3. The High Court dismissed the writ petitions filed by the concerned appellant following the decision of the coordinate bench of the High Court in *Ankamma Trading Company Vs. Appellate Deputy Commissioner (CT), Guntur & Anr*[1]. And other decisions taking the same view, despite the appellant pointing out to the High Court that the decision in Ankamma Trading Company (supra) has been impliedly overruled by the Supreme Court in *M/s. Innovatives Systems, Rep. by its Managing Partner Vs. State of Andhra Pradesh, Rep. by Principal Secretary to Government*[2]. In that case, this Court after clearly noting that the High Court had relied upon the judgment and order passed by the Division Bench of the same High Court [in Ankamma Trading Company (supra)] to dismiss the writ petition preferred by the appellant, yet proceeded to allow the appeal filed by the appellant therein by setting aside the decision of the High Court. The appellant in that case had filed

appeal within limitation period but deposited the twelve and a half percent (12.5%) of the difference of the tax assessed by the assessing authority in respect of which the appeal was preferred after the expiry of the limitation period specified in the first proviso of the concerned provision. This Court, nevertheless, held that the appellant having deposited the stipulated amount of twelve and a half percent (12.5%) as directed by the Appellate Deputy Commissioner (CT), the High Court ought to have condoned the delay in complying with the direction given by the Appellate Authority in that regard and thus restored the appeal with a direction to the Appellate Authority to decide the appeal on merits. Relying on the subsequent decisions of this Court in M/s. IOT Infrastructure & Energy Services Ltd., Rep. by its *Deputy Manager (Accounts) Vs. State of Andhra Pradesh*[3] *Rep. by its Principal Secretary to Government and M/s. Ranisati Trading Co. Rep. by its Managing Partner Vs. Commercial Tax Officer, Gajuwaka Circle, Visakhapatnam and Ors*.[4] , it is urged by the appellant-assessee that the High Court ought not to have disregarded those decisions on the specious ground that the same cannot be treated as a binding precedent and purportedly having been passed in exercise of plenary powers under Article 142 of the Constitution of India. Inasmuch as, looking at the decision in M/s. Innovatives Systems (supra) of this Court, there is hardly any doubt that the effect of the said order is to impliedly overrule the principle enunciated by the Division Bench of the High Court in Ankamma Trading Company (supra) or other decisions following the same. For, this Court had unmistakably shown inclination to apply its mind to the merits of the said order before it having granted leave to appeal against the same albeit it had disposed of the matter by a brief judgment. Thus, additionally, the doctrine of merger would come into play as exposited in *Kunhayammed and Ors. Vs. State of Kerala and Anr*[5]. , wherein a three-Judge Bench of this Court opined that once a special leave petition has been granted, the doors of the appellate jurisdiction of this Court have been let open and any order passed thereafter would be an appellate order and would attract the applicability of doctrine of merger. Further, it would not make a difference whether the order is one of reversal or of modification or of dismissal, or of affirming the order appealed against. It would also not make any difference if the order is a speaking or a non-speaking one.

4. In addition, the appellant(s)-assessee(s) have relied on the decisions of this Court in *Ranjit Impex Vs. Appellate Deputy Commissioner and Anr*[6]. , which has had an occasion to deal with more or less similar provision, if not identically worded, being Section 51 of the Tamil Nadu VAT Act, 2006. Even there the provision contained stipulation such as the proviso of the provisions under consideration pertaining to State of Andhra Pradesh and State of Telangana. It is then urged that even the Division Bench of the High Court in the case of Ankamma Trading Company (supra), in paragraph 25 has taken note of the fact that the proviso of the concerned section does not specifically mention the time within which such proof of payment is to be produced but then went on to rely on the first proviso dealing with the period of limitation within which the appeal is required to be filed and the maximum period of delay which could be condoned by the Appellate Authority, to hold that the deposit specified in the second proviso should also be paid within such time only. Else, it went on to hold that the Appellate Authority is obliged to reject the appeal or in other words, not admit the same should be “accompanied with” the receipt or proof of payment of amount referred to in the second proviso, the interpretation commended to the

High Court could be sustained. However, the High Court itself having recognized the fact that no specific mention is made about the time within which such proof of payment is to be produced, the corollary thereof is that the proof of payment is required to be produced by the assessee on the "first date of hearing" of the appeal for admission or consideration thereof on merits. The appellant has also relied on couple of reported decisions to contend that the right of appeal, though, it does not inhere in the party, but once such remedy is provided then it cannot be whittled down by giving strict interpretation to the second proviso. However, the just approach would be to read the expression "not to be admitted" as "not to be entertained" - if the dealer failed to produce proof of payment of tax dues as per the second proviso of the concerned provision. The thrust of the argument is that in cases where the appellant- assessee has already paid the requisite amount referred to in the second proviso of the concerned provision, before the appeal is taken by the Appellate Authority/Court for the "first time for consideration" after its filing in the office of the Appellate Authority, that will be substantial compliance of the second proviso. In such a case, the Appellate Authority would be obliged to admit the appeal if it deserves consideration on merits and the appellant-assessee cannot be non-suited on the ground that the amount so paid is after the limitation period specified for filing of an appeal.

5. The appellants would urge that there is well recognized distinction between the factum of filing, institution and presentation of the appeal and the factum of "entertaining" the appeal or consideration thereof for admitting the same on merits. If the provision had expressly stated that the "appeal when filed"

6. The respondent-State, on the other hand, has supported the exposition in the case of Ankamma Trading Company (supra), and would urge that the view taken in the said decision is the only possible interpretation of the second proviso. In that, if the amount specified in the second proviso is not deposited within the period provided for filing an appeal and including for condonation of delay, such appeal would be inflicted with institutional defect and will have to be rejected on that count in light of the mandate contained in the proviso of the concerned provision. It is urged that the appellants have been ill- advised to invoke doctrine of merger. According to the respondent-State, on a bare perusal of the decision of this Court in M/s. Innovatives Systems (supra), and the other decisions passed following the same would clearly indicate that it has been passed in the fact situation of the concerned case. Notably, this Court has not interpreted the provisions under consideration or for that matter explicitly overturned the principle expounded by the Division Bench in Ankamma Trading Company (supra). Whereas, a bare reading of the provision makes it amply clear that it is a mandatory provision. Failure to comply with the stipulation in the second proviso would inevitably denude the Appellate Authority from entertaining the same or so to speak, admitting the same on merits. Heavy reliance has been placed on the decision in the case of *M/s. Lakshmi Rattan Engineering Works Ltd. Vs. Asst. Commr. Sales Tax, Kanpur & Anr*[7]. , wherein this Court was called upon to interpret Section 9 of the relevant enactment. As per that provision, no appeal against an assessment shall be entertained unless it is accompanied by satisfactory proof of the payment of the tax amount admitted by the appellant to be due. The exposition in this decision, according to the respondent-State, would admit of no other interpretation of the

second proviso as is held by the Division Bench of the High Court in Ankamma Trading Company (supra). In that, the Appellate Authority cannot exercise power to admit the appeal beyond the statutory period and since the pre-deposit is quintessence, the requirement of pre-deposit within the maximum period of limitation for filing the appeal including, for condoning the delay in filing the same, would have bearing on the second proviso of the concerned provision. Reliance is also placed on the decision in *Narayan Chandra Ghosh Vs. UCO Bank and Ors*[8]. , which has had an occasion to interpret the purport of Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 wherein the Court noted that there is an absolute power to entertain an appeal under Section 18 of the Act unless the condition precedent, as stipulated, is fulfilled. The respondent-State would, thus, contend that the deposit even if made by the assessee before the rejection of the appeal (for non-compliance of the pre-condition in terms of the proviso of the concerned provision), will be of no avail to the assessee.

7. We have heard the learned counsel for the parties. At the outset, we deem it apposite to reproduce the relevant provisions of the APGST Act, 1957 and AP VAT Act, 2005. Almost identical provisions obtain in the Telangana State Acts. Section 19 and 21 of the APGST Act, 1957 and Section 31 and 33 of the AP VAT Act, 2005, read thus:

> "APGST Act, 1957 A.P. VAT Act, 2005 Section 19. Appeals.-(1) Any dealer objecting to any order passed or proceeding recorded by any authority under the provisions of the Act other than an order passed or proceeding recorded by an Additional Commissioner or Joint Commissioner, or Deputy Commissioner under sub-section (4C) of section 14 may within thirty days from the date on which the order or proceeding was served on him, appeal to such authority as may be prescribed:
>
> Provided that the appellate authority may within a further period of thirty days admit the appeal preferred after a period of thirty days if he is satisfied that the dealer had sufficient cause for not preferring the appeal within that period:
>
> Provided further that an appeal so preferred shall not be admitted by the appellate authority concerned unless the dealer produces proof of payment of tax admitted to be due, or of such instalments as have been granted, and the proof of payment of twelve and half per cent of the difference of the tax assessed by the assessing authority and the tax admitted by the appellant, for the relevant assessment year, in respect of which the appeal is preferred.
>
> 21. Appeal to the Appellate Tribunal.-(1) Any dealer objecting to an order passed or proceeding recorded- 31. Appeal to Appellate authority.- (1) Any VAT dealer or TOT dealer or any other dealer objecting to any order passed or proceeding recorded by any authority under the provisions of the Act other than an order passed or proceeding recorded by an Additional Commissioner or Joint Commissioner or Deputy Commissioner may, within thirty days from the date of which the order or proceeding was serve on him, appeal to such authority as may be prescribed:

Provided that the appellate authority may within a further period of thirty days admit the appeal preferred after a period of thirty days if he is satisfied that the VAT dealer or TOT dealer or any other dealer had sufficient cause for not preferring the appeal within that period:

Provided further that an appeal so preferred shall not be admitted by the appellate authority concerned unless the dealer produces proof of payment of tax admitted to be due, or of such instalments as have been granted, and the proof of payment of twelve and half per cent of the difference of the tax assessed by the authority prescribed and the tax admitted by the appellant, for the relevant tax period, in respect of which the appeal is preferred.

33. Appeal to the Appellate Tribunal.-(1) Any dealer objecting to an order passed or proceeding recorded-

(a) by any prescribed authority on appeal under section 19, or

(b) by an Additional Commissioner or Joint Commissioner or Deputy Commissioner suo motu under sub-section (4C) of section 14 or under sub-section (2) of section 20, may appeal to the Appellate Tribunal within sixty days from the date on which the order or proceeding was served on him.

(2) The Appellate Tribunal may within a further period of sixty days admit the appeal after the period of sixty days specified in sub-section

(1) if it is satisfied that the dealer had sufficient cause for not preferring the appeal with that period.

Provided that no appeal against the order passed under section 19 shall be admitted under sub-section (1) or sub-section (2), unless it is accompanied by satisfactory proof of the payment of fifty per cent of the tax as ordered by the Appellate Deputy Commissioner under section19:

Provided further that no appeal against the order passed under sub-section (2) of section 20 shall be admitted under sub-section (1) or sub-section (2), unless it is accompanied by satisfactory proof of the payment of the tax admitted by the appellant to be due or in such instalments thereof as might have become payable as the case may be, and twenty five per cent of the difference of the tax ordered by the revisional authority under sub-section (2) of section 20 and the tax admitted by the appellant:

(a) by any authority prescribed, on appeal under section 31, or

(b) by the Additional Commissioner, or Joint Commissioner or Deputy Commissioner under section 21 or 32 or 38; or

(c) by any authority following the ruling or order passed under section 67;
May appeal to the Appellate Tribunal within sixty days from the date on which the order or proceeding was served on him.

(2) The Appellate Tribunal may within a further period of sixty days admit the appeal preferred after the period of sixty days specified in sub-section (1), if it is satisfied that the dealer had sufficient cause for not preferring the appeal within that period: Provided that no appeal against the order passed under section 31 shall be admitted under sub-section (1) or sub-section (2) of this section unless it is accompanied by satisfactory proof of the payment of fifty per cent of the tax, penalty, interest or any other amount as ordered by the appellate authority under section 31."

Provided also that the assessing authority shall refund the said amount of twelve and half per cent or twenty five per cent or fifty per cent of the difference of tax assessed by the assessing authority or revisional authority as the case may be and the tax admitted and paid by the appellant, with simple interest calculated at the rate of 18 per cent per annum if the refund is not made within 60 days from the date of receipt of the order passed under section 19 or section 21.

(emphasis supplied)

8. These provisions have been interpreted by the Division Bench of the High Court in the case of Ankamma Trading Company (supra). We are essentially concerned with the second proviso of Section 19 and Section 31 of the respective enactment; and first proviso of Section 21(2) and Section 33(2) of the respective enactment. Upon reading the Section under consideration as a whole, it is evident that the first proviso in the concerned Section (Section 19 and Section 31, as the case may be) pertains to limitation period "for filing" of an appeal; and discretion of the Appellate Authority to condone the delay in filing of such appeal, up to a maximum period specified therein. Indeed, the second proviso is part of the same Section. However, it is an independent condition and in one sense, mutually exclusive condition mandating or enjoining the appellant to produce proof of payment of tax dues in respect of which the appeal is preferred. That obligation, in our opinion, can be discharged until the appeal is considered for admission and/or condonation of delay in filing of the appeal, as the case may be, by the Appellate Authority for the first time. We are inclined to take this view as even the High Court in Ankamma Trading Company (supra) had justly noted that the said proviso does not provide for any specific period within which the tax dues should be paid. Moreover, there is no express stipulation to deposit the tax dues in respect of which the appeal is preferred, at the time of its filing, institution or presentation as such. In the absence of such a clear stipulation, it must necessarily follow that it is open to the assessee to file the appeal within the statutory period of limitation provided therefor and later on, deposit the specified tax dues but before the appeal is taken up for consideration by the Appellate Authority for the first time - be it for condonation of delay in filing the appeal and/or to admit it on merits or otherwise. The proof of such payment having been made could be produced thereat. Failing which, the Appellate Authority will have no other option but to reject the appeal on that count. The Appellate Authority has no power to extend the time to deposit the specified tax dues.

9. Suffice it to observe that, stricto sensu, the said proviso is not a provision of pre-deposit at the stage of filing, institution or presentation of the appeal as such; but is a provision stipulating payment of tax dues as a pre-requisite or sine qua non for consideration of appeal on merits or otherwise and/or for condonation of delay in filing the same, as the case may be, for the first time. If we may say so, it is also to impose fetter on the Appellate Authority from admitting the appeal for consideration on merits. It is well recognized that filing, institution or presentation of appeal in the office of the Appellate Authority is an independent event than the appeal being taken up for consideration "for the first time" for being admitted on merits or otherwise and/or for condonation of delay in filing it, as the case may be. There is no reason to interpret the stated proviso in any other manner lest, inevitably, it would result in re-writing the same and entail in doing violence to the legislative intent. Presumably, this Court in M/s. Innovatives Systems (supra), and other decisions rendered following the same, therefore, was persuaded to allow the appeal preferred by the assessee and to relegate the parties before the Appellate Authority for consideration of the appeal for admission on merits.

10. Concededly, this Court was conscious of the decision in Ankamma Trading Company (supra). In that, the judgment under challenge before it in the concerned appeal was founded on the view already taken by the coordinate bench of the same High Court [including in Ankamma Trading Company (supra)]. It has been so recorded by this Court. In that sense, the legal position expounded in Ankamma Trading Company (supra), stood impliedly overruled, even though that decision has not been adverted to or expressly overruled by this Court.

11. The argument of the respondent proceeds that the decision in M/s. Innovatives Systems (supra), neither refers to any specific provision nor has it expressly over turned the decision of the Division Bench of the High Court in Ankamma Trading Company (supra). Thus, it cannot be considered as a binding precedent. We are not impressed by this submission. Indeed, the decision of this Court in M/s. Innovatives Systems (supra), is a brief judgment. That, however, would make no difference. For, it is well established that once a special leave petition has been granted, the doors for the exercise of appellate jurisdiction of this Court have been let open. Resultantly, the order impugned before the Supreme Court became an order appealed against and any order passed thereafter would be an appellate order and attract the doctrine of merger despite the fact that the order is of reversal or of modification or of affirming the order appealed against and including is a speaking or non-speaking one. This legal position has been restated in Kunhayammed (supra). Having said this, we must reject the argument of the respondent-State that the decision of this Court in M/s. Innovatives Systems (supra), and other decisions following the same, cannot be considered as binding precedent.

12. In addition, the appellant-assessee has rightly placed reliance on the decision of this Court in Ranjit Impex (supra). In that case, the Court considered almost similar stipulation in Section 51 of the Tamil Nadu VAT Act, 2006. Indeed, the second proviso therein uses the expression no appeal shall be "entertained", unlike the expression used in the provisions under consideration that the appeal so preferred "shall not be admitted". We are

conscious of the fact that the first proviso pertaining to maximum period of delay to be condoned by the Appellate Authority, also uses the expression "admit the appeal". That expression "admit", however, must be read to mean filing, institution or presentation of the appeal in the office of the Appellate Authority. Whereas, the expression "admitted" used in the second proviso will have to be construed as analogous to expression "entertained". We are inclined to take this view as the setting in which the provisions under consideration appear leaves no manner of doubt that it is ascribable to the event of taking up the appeal for consideration, for the first time, to admit it on merits or otherwise and/or for condonation of delay in filing the appeal, as the case may be. Before that event occurs, it is open to the appellant to deposit the tax dues in respect of which the appeal is preferred and produce proof of such deposit before the Appellate Authority.

13. This view is reinforced from the exposition of this Court in Ranjit Impex (supra), wherein the view taken by the Division Bench of the High Court of Madras that the proof of deposit of tax has to be produced at the time when the appeal is taken up for consideration, but not at the time of filing or presentation of the appeal, has been upheld.

14. Even the decision of this Court in M/s. Lakshmi Rattan Engineering Works Ltd. (supra), heavily relied upon by the respondent-State, does not militate against the view taken by us - that the true purport of the said proviso is that the Appellate Authority shall proceed with the consideration of appeal for admission for hearing on merits or otherwise and/or for condonation of delay in filing appeal, as the case may be, if the proof of payment of the specified tax dues referred to in the said proviso is produced by the appellant on the first date of such consideration of the appeal. Similarly, the case of Narayan Chandra Ghosh (supra), will be of no avail to the respondent, wherein the Court opined that there is an absolute bar to "entertain" an appeal under Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002, unless the conditions and stipulation are fulfilled. Inasmuch as, the second proviso under consideration does not require payment of tax dues referred to therein, at the time of filing, institution or presentation of the appeal but the proof of such payment has been made, is required to be produced before the Appellate Authority at the first hearing of the appeal; failing which the Appellate Authority would be well within its jurisdiction to reject it rather duty bound not to proceed with the appeal on merits and to reject the same at the threshold on the ground of an institutional defect.

15. For the view that we have taken, it is wholly unnecessary to deal with the other reported decisions relied upon by the parties or to deal with other arguments which have no bearing on the conclusion reached by us.

16. Reverting to the factual position in the appeals under consideration, admittedly, the appellant-assessee had deposited the specified tax dues before the date on which appeal preferred by them was taken up for consideration for the first time for admission on merits. In such a situation, the stated proviso becomes unavailable to reject the appeal on the ground of institutional defect. In this view of the matter, all these appeals must succeed.

17. While parting, we may observe that taking advantage of the interpretation given by us,

it is possible that some unscrupulous litigant (assessee) may file an appeal within the limitation period but keep it under defect so that the same does not proceed for consideration before the Appellate Authority. To obviate such a mischief, we hold and direct that the Appellate Authority shall be obliged to take up every singular appeal for consideration for admission on merits and/or for condonation of delay in filing the appeal for the first time, no later than thirty days from the date of its filing, institution or presentation in the office of the Appellate Authority. This direction shall be complied with by all concerned meticulously, without any exception. That is the only way to secure the interests of the Revenue and at the same time to effectuate the purpose underlying the proviso regarding the deposit of specified amount of tax dues.

18. Resultantly, the impugned judgment of the High Court is set aside and instead the writ petition(s) are allowed by setting aside the order passed by the Appellate Authority, rejecting the concerned appeals on the ground of non-compliance of the stated proviso of the provisions under consideration. The concerned appeals shall stand restored to the file of the Appellate Authority. The same shall proceed for consideration in accordance with law. All pending applications are also disposed of. No order as to costs.

19. These appeals were heard analogously with Civil Appeal No.7574/2014. In this set of appeals, admittedly, the appellant- assessee deposited the amount after the appeal filed by them came to be rejected by the Appellate Authority. In that sense, the appellant-assessee failed to produce proof of payment of tax dues in respect of which the appeal was preferred before the Appellate Authority when their appeal was taken up for consideration for admission. In Civil Appeal No.7574/2014, we have held that it is open to the assessee to deposit the amount before the event of first date of hearing of the appeal for admission and/or for condonation of delay in filing the appeal. Resultantly, the deposit made after rejection of the appeal will be of no avail to the appellant-assessee, in light of the mandate of the stated proviso under consideration.

20. In view of the above, these appeals must fail and the same are therefore, dismissed. All pending applications are also disposed of. No order as to costs.

21. This appeal was analogously heard along with Civil Appeal No.7574/2014. In the present appeal, the State has challenged the judgment and order passed by the High Court in Writ Petition No.22337 of 2015 and, in particular, the liberty granted to the respondent (writ petitioner) to pay the requisite amount after expiry of the limitation period prescribed under Section 33 of AP VAT Act, 2005 and on such deposit being made, the Appellate Authority is directed to consider the appeal on merits.

22. The background in which such direction came to be issued, can be discerned from the appeal filed by the State. To wit, the respondent, who was dealing in works contracts and was registered under APGST Act, 1957, was assessed by the appropriate authority but that assessment was revised by the Commercial Tax Officer by passing a revision order dated 25th March, 2013. Against that decision, respondent-assessee preferred appeal before the State Sales Tax Appellate Tribunal. During the pendency of the said appeal, respondent filed a writ petition to challenge the orders passed by the Commercial Tax Officer dated

27th February, 2013 and 25th March, 2013. That writ petition has been disposed of by the High Court vide impugned judgment, with liberty to comply with the condition of paying the tax dues in terms of the second proviso of the concerned provision within a period of six weeks from the date of receipt of the copy of order and upon such compliance, the Appellate Authority would decide the pending appeal on merits.

23. Having regard to the exposition in Civil Appeal No.7574 of 2014, decided today, it must follow that if the appeal filed by the respondent is still pending and has not been taken up for consideration so far by the Appellate Authority, only then it would be open to the respondent to deposit the requisite amount and produce the proof of such deposit before the Appellate Authority. If, however, the appeal has already been taken up for consideration for being admitted on merits or otherwise and by that date the respondent had not deposited the requisite amount as prescribed in terms of stated proviso, the Appellate Authority would be well within its jurisdiction and rather duty bound to reject the appeal on the ground of an institutional defect. That is a matter to be considered by the Appellate Authority. Besides this observation, nothing more is required to be stated in this appeal filed by the State.

24. We dispose of the appeal in the aforementioned terms with no order as to costs. All pending applications are also disposed of.

25. Leave granted.

26. This appeal takes exception to the judgment and order dated 31st October, 2014 passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in Writ Petition No.837 of 2014, whereby the writ petition filed by the assessee challenging the order passed by the second respondent-Appellate Authority dated 31st December, 2013 came to be rejected. The appeal was dismissed on the sole ground that the appellant had failed to pay the required twelve and a half percent (12.5%) disputed tax in terms of Section 31 of AP VAT Act, 2005. Initially, the Commercial Tax Officer passed an assessment order on 11th June, 2012. The appellant filed appeal against the said assessment order on 11th July, 2012. The appellant was called upon by the Appellate Authority vide communication dated 12th July, 2012 to make good the short payment of pre-deposit in the sum of Rs.1,35,00,512/- as also the institution fee. The appellant filed response to the said communication contending that there was input tax credit to the account of the appellant in the sum of Rs.1080,01,63,420/- and that amount would arise only in respect of the tax paid on taxable purchases effected within the State. Despite that factual aspect brought to the notice of the first Appellate Authority, it rejected the appeal for non-payment of pre-deposit amount vide order dated 24th July, 2012. This was an ex-parte order.

27. The appellant then filed representation to the assessing authority for issuing tax credit certificate for giving necessary adjustments against the taxes payable for 04/2010 to 06/2011 and pointing out the order of the Tribunal dated 18th October, 2011 which was communicated long back but not implemented thus far. The appellant, therefore, submitted new representation to the assessing authority on 15th September, 2012. The Commercial

Tax Officer eventually, issued a certificate on 12th October, 2012 certifying that the appellant has input tax credit of Rs. 92,01,606/-, eligible to be refunded either in cash or adjusted. On 13th October, 2012, the Commercial Tax Officer issued proceedings holding that the appellant has an excess tax credit of Rs.66,46,284/- for adjustment or refund.

28. The appellant being aggrieved by the orders passed by the Appellate Deputy Commissioner rejecting appeal on 24th July, 2012 on the ground of non-payment of requisite disputed tax amount, filed second appeal before the Sales Tax Appellate Tribunal. That came to be allowed by setting aside the order rejecting the first appeal and instead directing the first Appellate Authority to restore the appeal and hear the appellant, as the order dated 24th July, 2012 was an ex parte order passed without hearing the appellant.

29. In remanded proceedings, appellant filed evidence before the first Appellate Authority on 21st July, 2013 and requested to consider the evidence and give adjustment of the excess payment due to the appellant as certified by the assessing authority. Thus, the appellant requested the Appellate Authority to accept the tax credit certificates and take the appeal on file for disposal on merits. Despite production of the said certificates, the Appellate Deputy Commissioner once again called upon the appellant to pay the balance amount towards pre-deposit, vide communication dated 15th May, 2013. In response thereto, the appellant filed representation reiterating its earlier stand. Nevertheless, the Appellate Deputy Commissioner once again rejected the appeal on 31st December, 2013, for non-payment of pre-deposit amount primarily relying upon the judgment of Ankamma Trading Company (supra). Eventually, the appellant challenged the aforementioned decision by filing writ petition No.847 of 2013. That writ petition has been dismissed by the High Court on the basis of the exposition in Ankamma Trading Company (supra).

30. The principal grievance of the appellant is that after remand, the first Appellate Authority failed to consider the specific stand taken by the appellant that it was entitled to adjustment of the amount mentioned in the tax credit certificate and if so done the appellant had complied with the pre-condition of deposit of twelve and a half percent (12.5%) of the amount in respect of which the appeal was filed by the appellant before the first Appellate Authority. Although, this plea was specifically taken before the Appellate Authority, the judgment of the Appellate Authority has not analysed the same at all. Instead, it proceeded to dismiss the appeal merely by relying on the exposition in Ankamma Trading Company (supra). Similarly, even the High Court after recording this argument of the learned counsel for the appellant, has not analysed the same and mechanically rejected the writ petition on the ground that appellant had failed to comply with the pre-condition of deposit. This approach of the High Court as well as of the first Appellate Authority is the subject matter of assail in the present appeal.

31. We have heard the counsel for the parties. As regards the legal position expounded in Ankamma Trading Company (supra), we have already answered the same in Civil Appeal No.7574/2014 decided today. That appeal was heard along with all connected matters. In the present case, however, the additional point which arises is whether the appellant was entitled for adjustment of the amount mentioned in the tax credit certificate issued in favour of the appellant. Admittedly, the appellant had specifically taken that plea before

the first Appellate Authority. However, as already mentioned hitherto the first Appellate Authority failed to analyse that aspect - which it was expected to do, in terms of the earlier order passed by the second Appellate Authority and even otherwise. Further, this grievance was specifically made before the High Court in the writ petition filed by the appellant as is noticed from the impugned judgment, the relevant portion of the judgment recording the argument of the appellant, reads thus:

> Aggrieved thereby, the present Writ Petition is filed. Sri Tejprakash Toshniwal, Learned Counsel for the petitioner, would submit that in M/s. Ideal Detonators Pvt. Ltd. v. Commercial Tax Officer, the Supreme Court had directed the Appellate Deputy Commissioner to revive the earlier order and dispose of the same on merits, after due notice to the parties; in Fytochem Formulations Ltd. v. Commercial Tax Officer, a Division Bench of this Court had held that it is incumbent on the Commercial Tax Officer to decide the representation submitted by the petitioner; and, in case the petitioner is entitled to the excess amount, then a certificate/endorsement should be issued to him, so that the amount can be adjusted towards pre¬deposit of 12.5% at the time of admission of the appeal; the Commercial Tax Officer was directed to decide the representation; and, in case the petitioner's representation was accepted by the Commercial Tax Officer, the 2nd respondent was directed to admit the appeal. Learned Counsel would also rely on *Chander Prakash Goyal v. State of Haryana*, in this regard "

32. However, even the High Court has not answered this specific plea urged by the appellant, in the impugned judgment. If the appellant is right in contending that the appellant is entitled for an adjustment of amount and if so done, there would be no need for the appellant to deposit twelve and a half percent (12.5%) amount as required by the second proviso of Section 31 of the Act. The appellant had relied on the decisions of this Court to buttress that argument. However, the same has remained to be analysed and considered even by the High Court.

33. In that view of the matter, we deem it appropriate to set aside the impugned judgment and relegate the parties before the High Court for reconsideration of the Writ Petition No.837/2014 afresh on its own merits in accordance with law and including in light of decision of this Court in Civil Appeal No.7574/2014 decided today. All contentions available to both sides in the remanded writ petition are left open to be considered on its own merits and in accordance with law.

34. Accordingly, this appeal is allowed. The impugned judgment and order passed by the High Court dated 31st October, 2014 in Writ Petition No.837/2014 is set aside and instead the writ petition is restored to the file of the High Court for fresh consideration in light of the observations made hitherto. All contentions available to the parties are left open. All pending applications are also disposed of. No order as to costs.

35. This appeal was heard analogously with Civil Appeal No.7574/2014. It has been preferred by the assessee. The respondent No.2 passed an order dated 24th February, 2015, levying a penalty under Section 53(3) of the AP VAT Act, 2005 amounting to Rs.67,57,696/-, being equivalent to 100% of the tax due. The appellant relies on a

certificate dated 4th April, 2015 issued by respondent No.1 and stated on oath that a tax credit carry forward of Rs.10,63,683/- by end of May, 2014 is available to the appellant. In the appeal preferred by the appellant against the order imposing additional tax and penalty filed on 7th April, 2015, the appellant specifically took a plea that the input tax credit and alleged variations between purchase and sales transactions recorded in the books of account vis-a-vis the returns filed under the AP VAT have been wrongly disallowed.
Notably, the appellant filed an affidavit stating that a tax credit of Rs.10,63,683/- is available to the appellant after filing the monthly return for May, 2014 and that such credit has not been adjusted to any other tax liability and thus prayed that the said credit may be adjusted towards the twelve and a half percent (12.5%) of Rs.67,57,696/-, which comes to Rs.8,44,712/-. Despite this specific stand taken by the appellant on affidavit, the respondent No.3 issued notice claiming that the appeals filed by the appellant were not compliant with Section 31 for want of proof of payment of twelve and a half percent (12.5%) of the disputed tax and penalty. Later on, respondent No.3 rejected the appeal on 5th June, 2015 on the ground that the appellant had failed to produce the proof of payment of twelve and a half percent (12.5%) of the disputed tax and penalty.

36. It is noticed from the narration of facts in the appeal that the appellant was then advised to deposit the twelve and a half percent (12.5%) disputed tax which it did on 30 th January, 2016 and 30th March, 2016, in installments. The appellant had also filed writ petition under Article 226 of the Constitution of India being Writ Petition No.393 of 2015 and assailed the order passed by the Appellate Authority, rejecting its appeal on the ground of institutional defect due to non-production of proof of payment of disputed tax. The High Court relying on Ankamma Trading Company (supra), rejected the writ petition filed by the appellant.

37. Being aggrieved, the appellant has preferred this appeal. Upon perusal of order passed by the Appellate Authority, it is noticed that even the Appellate Authority rejected the appeal without taking notice of the prayer made by the appellant on oath that a tax credit of Rs.10,67,683/- is available to the appellant and that such credit has not been adjusted towards any other tax liability and can be adjusted towards the twelve and a half percent (12.5%) of disputed tax amount of Rs.67,57,696/-, which comes to Rs.4,44,712/- only. The order of the Appellate Authority, as communicated to the appellant, reads thus:

> "The appeal petition along with stay petition (main appeal & penalty appeal) are returned as the same are not in accordance in terms of second provision to sec.31(1) of read with Rule 38 of the AP VAT, 2005 for the reason.
>
> "Provided further that an appeal so preferred shall not be admitted by the appellate authority concerned unless the dealer produces proof of payment of tax admitted to be due or of such instalments as have been granted and the proof of payment of 12.5% of the difference of the tax assessed and the tax admitted by the appellant, for the relevant tax period, in respect of which the appeal is preferred."
>
> Further they have not filled the challan for appeal fee in original and also medical certificate for delay in submission of the appeal.

Hence, in view of the above, the admission of the two appeals stand rejected."

38. Even the High Court has failed to consider this aspect of the matter. Whereas, if the representation/request made by the appellant is just and deserved to be accepted, the appellant would be right in contending that no payment towards the amount specified in the stated proviso under consideration was required to be made by the appellant and for that reason, the appeal preferred by the appellant ought to proceed for consideration for admission on merits. In that, upon accepting the representation to adjust the tax credit of Rs.10,63,683/-, a certificate/endorsement could be issued to the appellant by the department so that the said amount is adjusted towards payment of specified amount of tax dues including twelve and a half percent (12.5%). There is force in this submission. However, instead of examining this plea raised by the appellant in this appeal, we deem it proper to relegate the parties before the High Court to consider the same on its own merits, in accordance with law. We do not wish to dilate on any other contention in this judgment. We leave all questions and contentions, available to both sides, open to be decided by the High Court on its own merits.

39. In view of the above, we set aside the impugned judgment of the High Court and relegate the parties before the High Court by restoring the Writ Petition No.31393 of 2015, for fresh consideration thereof by the High Court on its own merits in accordance with law. All pending applications are also disposed of. No order as to costs.

40. This appeal was tagged along with the Civil Appeal No.7574/2014 and other connected matters. However, in those cases, the High Court had rejected the writ petition on the sole ground that the concerned writ petitioner had failed to comply with the condition of deposit prescribed in terms of stated proviso of the provision(s) under consideration. In none of these cases, the High Court considered the matter on merits regarding the challenge to the original assessment order. In the present appeal, the appellant cannot be heard to agitate the question already decided in Civil Appeal No.7574/2014 as nothing has been brought to our notice to show that the appellant had deposited the specified tax dues, in respect of which the appeal was filed, before the first date of consideration of the appeal by the Appellate Authority.

41. However, as the High Court has dealt with merits of the challenge to the original order, in exercise of writ jurisdiction and as no argument was advanced by either party in that regard, we deem it appropriate to delink this appeal and direct that it be heard separately on the challenge to the original order passed by the first Appellate Authority. Appeal to proceed accordingly.

Judgment Referred.

[1](2011) 44 VST 189 (AP)

[2] Civil Appeal No.2230/2015 (arising out of SLP (C) No.1832/2015 decided on February 23, 2015).

[3](Civil Appeal No.12077/2016 decided on 14.12.2016)

[4](Civil Appeal No.5339/2017

[5](2000) 6 SCC 359

[6](2013) 10 SCC 655

[7](1968) 1 SCR 505

decided on
17.04.2017)
[8](2011) 4 SCC 0548