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(1994) 07 AP CK 0039

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13907 of 1993

BPL Limited APPELLANT

Vs

State of Andhra Pradesh and Another RESPONDENT

Date of Decision : 18-07-1994

Acts Referred:
Andhra Pradesh General Sales Tax Act, 1957 — Section 15, 40, 5, 9

Citation : (1996) 3 ALD 647 : (1995) 96 STC 119

Hon'ble Judges : P. Venkatarama Reddi, J;K.M. Agarwal, J

Bench : Division Bench

Advocate : S. Krishnamurthy, for the Appellant; Government Pleader for Commercial Taxes, for the Respondent

Judgement

P. Venkatarama Reddi, J.—The petitioner is a dealer in television sets which come under electronic goods taxable u/s 5 read with entry 38 of the First Schedule to the Andhra Pradesh General Sales Tax Act, 1957. The rate of tax payable on the sales of electronic goods is 0.10 paise in the rupee. It appears that by G.O.Ms. No. 520, dated July 20, 1988, the rate of tax on electronic goods was reduced to 2 per cent with effect from July 1, 1988. That notification was rescinded by a notification issued in G.O.Ms. No. 864 (Revenue) (CT-II) Department dated September 7, 1993. By the same G.O., the Governor of Andhra Pradesh directed that the rate of tax payable under the Andhra Pradesh General Sales Tax Act on the sales of electronic goods shall be at the rate of four paise in the rupee at the time of first sale in the State with effect from August 1, 1993. In this writ petition, the petitioner is challenging the enhancement of rate of tax brought about by the aforementioned G.O., with retrospective effect from August 1, 1993. The petitioner submits that from August 1, 1993, till the date of its publication, the tax could only be levied and collected at the pre-existing rate. In other words, it is the contention of the petitioner that G.O.Ms. No. 864, dated September 7, 1993, enhancing the rate of tax takes effect from August 1, 1993. For the same reason, according to the petitioner, the earlier G.O., could not have been rescinded with retrospective effect from August 1, 1993.

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2. u/s 40 of the Andhra Pradesh General Sales Tax Act, the State Government is empowered by a notification to alter, add to or cancel any of the Schedules. There is no provision similar 39 of the Act conferring the power to issue the notification u/s 40 with retrospective effect.

3. Section 9 of the A.P. General Sales Tax Act empowers the State Government by notification in the A.P. gazette to grant exemption or reduction of the rate of tax or interest payable under the Act. There is no specific power to rescind the exemption notification. However, such power flows from section 15 of the A.P. General Clauses Act, 1891. Notification No. I of G.O.Ms. No. 864 is therefore traceable to such power and it is expressly stated to be so in that notification. Construing a notification issued by the Government cancelling the earlier exemption notification, a Division Bench of this Court in Yemmiganur Spinning Mills Limited v. State of Andhra Pradesh [1976] 37 STC 314 held that such a notification cannot be given retrospective effect and it would be effective only on and from the date of its publication in the A.P. Gazette, but not with effect from any earlier date. Thus, the issue raised in the writ petition is no longer res integra and it is concluded by the aforementioned judgment. Following the said judgment, it must be held that the cancellation of G.O.Ms. No. 520, Revenue, dated July 20, 1988, with retrospective effect from August 1, 1993, is invalid and ultra vires the powers of the State Government under the Act. When once the notification rescinding the earlier G.O., is construed to be effective only from the date of its publication in the gazette, it logically follows that the Notification No. II issued u/s 40 of the Andhra Pradesh General Sales Tax Act prescribing the rate of tax at 4 per cent with effect from August 1, 1993, cannot be given effect to. When there is an exemption in force, the question of applying a particular rate of tax does not arise and the Notification No. II cannot therefore operate in law until such date as the exemption is made legally ineffective. Notifications I and II being part of an integral scheme, the date of cancellation of the exemption and the date of operation of the modified rate of tax should necessarily coincide. If so, there can be no doubt, the rate of 4 per cent will be effective only from September 10, 1993, i.e., the date on which the notifications were published in the A.P. gazette.

4. We, therefore, allow the writ petition by declaring the words "with effect from August 1, 1993" occurring in Notifications I and II of G.O.Ms. No. 864, Revenue, dated September 7, 1993, as ultra vires the authority of the State Government and direct that the rate of tax at 4 per cent prescribed therein shall be levied and collected from the sales effected by the petitioner on and from September 10, 1993. No order as to costs.

5. Writ petition allowed.

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