

(1996) 06 AP CK 0022

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Petition No's. 7762 and 7763 of 1996, 17575 of 1992 and T.R.C. No. 78 of 1992

BPL Limited

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 06-06-1996

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 22, 22(1), 22(6), 22(6A), 33B

Citation : (1996) 3 ALT 595 : (2000) 117 STC 373

Hon'ble Judges : S.S. Mohammed Quadri, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : S. Krishna Murthy, for the Appellant; M. Ramaiah, Special Government Pleader for Taxes, for the Respondent

Judgement

Syed Shah Mohammed Quadri, J.—These two civil miscellaneous petitions are filed in the tax revision cases, which are preferred, by the same petitioner u/s 22(1) of the Andhra Pradesh General Sales Tax Act, 1957 (for short "the Act"), against the orders of the Sales Tax Appellate Tribunal, Andhra Pradesh, dismissing the appeals relating to the assessment years 1994-95 and 1995-96.

2. In these petitions, the petitioner seeks stay of collection of the disputed tax of Rs. 8,83,143, payable pursuant to the provisional assessment for the assessment year 1994-95 and a sum of Rs. 31,30,744 found due on provisional assessment for the assessment year 1995-96.

3. Sri S. Krishna Murthy, the learned counsel for the petitioner, submits that the provisional assessments are wholly erroneous as the goods in question are washing machines with micro processing system which is an electronic system so the goods should have been treated as electronic goods but not as electrical goods for the purpose of levying tax under the Act.

4. This contention relates to the merits of the case and it has to be decided at the time of final hearing of the revision. Therefore, we do not consider it

appropriate to express any opinion on that question at the interlocutory stage.

5. The learned counsel, however, submits that it is a fit case in which this Court should exercise the power under proviso to sub-section (6) of section 22 of the Act and grant stay of recovery of tax.

6. Sri M. Ramaiah, the learned Special Government Pleader for Taxes, on the other hand, invited our attention to sub-section (6-A) of section 22 of the Act and contends that no absolute stay can be granted by virtue of the said provision and that the petitions are liable to be dismissed.

7. The short question that arises for consideration is, having regard to the relevant provisions of the Act, what interim order can be passed on these petitions.

8. The scope of the power of this Court under the relevant provisions of the Act may be noticed here. It will be appropriate to read here sub-sections (6) and (6-A) of section 22 of the Act which are as follows :

"Sub-section (6) : Notwithstanding that a petition has been preferred under sub-section (1), tax shall be paid in accordance with the assessment made in the case :

Provided that the Special Appellate Tribunal may, in its discretion permit the petitioner to pay the tax in such number of instalments, or give such other direction in regard to the payment of tax as it thinks fit.

Provided further that if, as a result of the petition, any change becomes necessary in such assessment, the Special Appellate Tribunal may authorise the assessing authority to amend the assessment, and on such amendment being made the excess amount paid by the dealer shall be refunded to him without interest, or the further amount of tax due from him shall be collected in accordance with the provisions of this Act, as the case may be.

Sub-section (6-A) : The payment of tax and penalty, if any due in accordance with the order of the Appellate Tribunal in respect of which a petition has been preferred under sub-section (1) shall not be stayed pending the disposal of the petition, but if such amount is reduced as a result of such petition, the excess tax paid shall be refunded in accordance with the provisions of section 33-B."

9. A perusal of the provisions, extracted above, shows that sub-section (6) declares that despite the fact that a revision u/s 22(1) is filed, tax, as per the assessment, has to be paid. However, the first proviso to that sub-section confers discretion on the High Court to allow any petitioner to pay the tax due by him in such number of instalments as it may fix and also empowers to give such other directions in regard to the payment of tax as it thinks fit. The second proviso to sub-section (6) is not relevant for our purpose.

10. It is true that sub-section (6-A) which was brought on the statute book by Amendment Act 18 of 1985, says that the payment of tax and penalty, if any due

in accordance with the order of the Appellate Tribunal, which is the subject-matter of the revision, shall not be stayed pending disposal of the petition; it further provides that if the outcome of the revision results in reduction of tax which was subject-matter of the revision, the excess tax paid shall be refunded in accordance with the provisions of section 33-B of the Act.

11. Thus it is clear that the power of the High Court under the first proviso to sub-section (6) extends to not merely to permitting the petitioner to pay the tax due in instalments, as fixed by the High Court, but also to granting such direction as it may deem fit. It follows that in appropriate cases it has power to grant stay of recovery of tax due by the petitioner. It appears to us that the power of the High Court under the first proviso to sub-section (6), discussed above, is neither taken away nor controlled by sub-section (6-A) as it does not begin with a non obstante clause to keep out the power under the proviso. From a harmonious construction of both these provisions, sub-sections (6) and (6-A), having regard to the legislative intent, we conclude that where the stay of collection of tax is sought in a revision filed u/s 22(1) of the Act, the High Court in its discretion may permit the petitioner to pay the tax in such instalments as it may think just and proper; it may in its discretion give such other direction in regard to the payment of tax as it thinks fit including the direction not to collect tax pending disposal of the revision; but the High Court will exercise this power very sparingly in special circumstances to prevent grave miscarriage of justice. The same view is taken by a division Bench of this Court in *Bharat Litho Press Vs. State of Andhra Pradesh*, . Construing the abovesaid provisions the Bench observed as follows :

"We must make it clear that we are concerned at this stage only with the question of power and not with its exercise. We also take due note of the legislative concern expressed in sub-section (6) and sub-section (6-A) - indeed, of other provisions relating to stay of disputed tax pending appeals, referred to above that ordinarily the collection of tax should not be stayed pending the revision. It is equally true that by the time the matter reaches this Court, more than one Tribunal under the Act has confirmed the exigibility of the tax disputed in the revision. But that is a matter which the High Court shall have to and will-keep in view. It will also have regard to the facts of a case before it. Ordinarily, just because a tax revision case is admitted, an order of stay will not follow automatically. But, if the High Court feels that the facts of a particular case do warrant either the payment of tax in instalments or stay of collection of part of the tax in dispute, it may make such an order. The court would not stay the collection of the entire disputed tax except in very grave cases where it feels that there has been a grave miscarriage of justice."

12. In C.M.P. No. 17575 of 1992 in T.R.C. No. 78 of 1992 a division Bench of this Court passed the following order on November 3, 1992 :

"We direct that there shall be no stay of recovery of the amount in demand. This direction is issued in the light of section 22(6-A) of the Andhra Pradesh General

Sales Tax Act. However, the petitioner will be permitted to pay the amount in demand in three (3) equal monthly instalments.

The petition is disposed of accordingly."

This order is relied upon by the learned Government Pleader in support of his contention that direction in the nature of staying recovery of tax, cannot be given by the High Court. In our view the said order does not lay down a different principles; indeed there is no reference to the first proviso to sub-section (6) much less any discussion on interplay of the first proviso to sub-section (6) and sub-section (6-A).

13. In the light of the principle stated above we shall now examine this case to find out as to whether there has been grave miscarriage of justice to grant direction to the respondent not to recover tax due.

14. The question involved in this case is whether the washing machine having micro electronic process falls within the meaning of "electrical goods" or under "electronic equipment". By the order of assessment dated December 5, 1995 the assessing authority treated it as falling under "electrical goods". That view was confirmed by the first appellate authority in its order dated December 30, 1995. On further appeal by the petitioner, the Tribunal also took the same view and dismissed the appeal of the petitioner on May 25, 1996. On the question that arises in these revisions all the three authorities have concurrently held against the petitioner. In these C.M.Ps. nothing is pointed out to us to conclude that there has been any miscarriage of justice and indeed there is nothing. It is also not a case where grave hardship or irreparable loss would be caused to the petitioner if direction is not granted in favour of the petitioner. Therefore, in our view, it is not a fit case where direction not to recover tax in toto, should be granted.

15. Having regard to the facts and circumstances of the case, in our view interest of justice would be met if the petitioner is permitted to deposit the tax due in two equal instalments, the first instalment should be paid on or before June 20, 1996 and the second instalment on or before July 4, 1996.

The civil miscellaneous petitions are accordingly ordered.

16. Petitions ordered accordingly.