
(2010) 11 AP CK 0086
In the Andhra Pradesh High Court
Case No : T.R.E.V.C. No. 3 of 2007

GMMCO Limited

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 11-11-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 43 VST 312

Hon'ble Judges : V.V.S. Rao, J;Ramesh Ranganathan, J

Bench : Division Bench

Advocate : S. Dwarakanath, for the Appellant; Special Standing Counsel for Commercial Taxes, for the Respondent

Final Decision : Allowed

Judgement

Ramesh Ranganathan, J.—This revision, u/s 22(1) of the APGST Act, 1957, is preferred against the order of the Sales Tax Appellate Tribunal in T.A. No. 376 of 2006 dated 22.12.2006.

2. Facts, to the extent relevant, are that the petitioner is an authorized dealer and service agent of Caterpillar Inc, USA, who are the manufacturers of earth moving equipment. For the year 2001-2002, the petitioner merely sold spare parts of earthmoving machinery, and not backhoe loader equipment. They filed their returns on the basis that the spares of earthmoving equipment fell under Entry 83 of the First Schedule to the APGST Act, and as taxable at the rate of 8%. On the sale of spares to M/s. Singareni Collieries Company Limited (SCCL), the petitioner claimed the benefit of concessional rate of tax of 4% against certificates in terms of G.O. Ms. No. 694 dated 10.09.1998. The Commercial Tax Officer, by his assessment order dated 30.09.2004, levied tax on the spare parts at 8%. He also accepted the certificates issued by SCCL, and extended to the petitioner the benefit of concessional rate of tax.

3. The Deputy Commissioner issued a revision show cause notice dated

11.11.2005 proposing to enhance the rate of tax on the entire turnover to 13%. The petitioner submitted their reply thereto vide letter dated 23.12.2005. The Deputy Commissioner, by his order dated 31.03.2006, confirmed the levy raising a demand of Rs. 1.08 crores on the ground that the petitioner had not produced their books of accounts to establish that they had not dealt in motor vehicles. Relying on the judgment of the Supreme Court, in Bose Abraham v. State of Kerala (2001) 121 STC 614, the Deputy Commissioner held that the goods sold by the petitioner were backhoe loaders, when in fact the petitioner had only sold spare parts of the said equipment during the year 2001-2002. In respect of the turnover relating to sale of spares to SCCL, the Deputy Commissioner held that the items sold by the petitioner were covered by Entry 1 of the First Schedule to the APGST Act. Consequent thereto, the Commercial Tax Officer gave effect to the order of the Deputy Commissioner.

4. Aggrieved by the said order, the petitioner invoked the jurisdiction of this Court, under Article 226 of the Constitution of India, and this Court granted interim stay on condition of payment of Rs. 20 lakhs. Subsequently, by order dated 15.06.2006, this Court declined to entertain the Writ Petition on the ground of existence of an alternative remedy. Consequent thereto, the petitioner preferred an appeal to the Sales Tax Appellate Tribunal in T.A. No. 376 of 2006. By order in W.P. No. 16201 of 2006 dated 14.08.2006 this Court granted stay of demand on condition that the petitioner deposited Rs. 25 lakhs within six weeks, and directed the Tribunal to dispose of the appeal within twelve weeks from the date of receipt of a copy of the order.

5. The Tribunal, by its order dated 22.12.2006, allowed the appeal in part and remanded the matter to the assessing authority with certain directions. The Tribunal held that the rate of tax, in respect of earthmoving equipment, was 8; only; and earthmoving machinery and its parts fell under Entry 1 of the First Schedule as a motor vehicle. On the sales to SCCL the Tribunal held that, in view of G.O. Ms. No. 38 dated 17.01.1997 having been rescinded by G.O. Ms. No. 390 dated 12.06.2001, the notification in G.O. Ms. No. 694 dated 10.09.1998, which was issued in partial modification of the notification in G.O. Ms. No. 38 dated 17.01.1997, must also be deemed to have been rescinded. The Tribunal granted relief to the extent of sales made to SCCL till 12.06.2001, and declared the certificate issued, for sales effected thereafter, as invalid. The matter was remanded to the Commercial Tax Officer to verify the certificates issued by SCCL, and to allow concessional rate of tax on spare parts or parts of backhoe loaders till 12.06.2001, and to disallow the claim for the balance period.

6. Section 20(1) of the APGST Act enables the Commissioner of Commercial Taxes to suo motu call for and examine the order passed by any officer subordinate to him and, if such an order is prejudicial to the interests of revenue, to initiate proceedings to revise, modify or set aside such order. Section 20(2) enables the Additional Commissioner, the Joint Commissioner, the Deputy Commissioner, the Assistant Commissioner and the Commercial Tax Officer, in

relation to orders passed by persons subordinate to them, also to exercise the revisional power of the Commissioner u/s 20(1) of the Act.

7. The condition precedent for exercise of revisional jurisdiction is prejudice to the interests of Revenue in the order proposed to be revised. If no such prejudice is found, the revisional power cannot avail. (Bankatlal Satyanarayana Parikh and Co., Nizamabad Vs. Commissioner of Commercial Taxes, A.P., Hyd. and another, . The words "prejudicial to the interests of Revenue" have not been defined but it would, ordinarily, mean that the order challenged is such as is not in accordance with law, in consequence whereof the lawful revenue due to the State has not been realised or cannot be realised. (DAWJEE DADABHOY and CO. Vs. S. P. JAIN AND ANOTHER.,). Ordinarily, if the legitimate revenue due has been realised, though as a result of an erroneous order having been made in that respect, the Commissioner cannot exercise his powers to revise the order. (COMMISSIONER OF Income Tax Vs. SMT. MINALBEN S. PARIKH.,). The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act, and this task is entrusted to the revenue. If, due to the order of the Officer, the revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of revenue. (MALABAR INDUSTRIAL CO. LTD. Vs. COMMISSIONER OF INCOME TAX, ; and Bismillah Trading Co. v. Intelligence Officer, Squad No. II, Agricultural Income Tax and Sales Tax (2001) 248 ITR 248 (Ker)(DB)).

8. In Venkatakrishna Rice Company Vs. Commissioner of Income Tax, the Division bench of the Madras High Court held that the expression "prejudicial to the interests of Revenue", should not be construed in a petty-fogging manner, and should be given a dignified construction; the use of the expression "Revenue" denotes some kind of abstraction or symbol in the same sense in which the expression "crown" is used to distinguish it from any person enthroned; the interests of the Revenue is not to be equated merely to rupees and paise; the interests of the Revenue are not tied up merely with realising as much Revenue as possible, willy nilly, merely looking to the productivity aspect of taxation; the said expression must be regarded as involving a conception of acts or orders which are subversive of the administration of revenue; there must be some grievous error in the order passed by the Officer which might set a bad trend or pattern for similar assessments which, on a broad reckoning, the Commissioner might think to be prejudicial to the interests of Revenue administration; there might be cases where the Commissioner might wish to interfere with an order of an Officer in order to safeguard the fair name and reputation of the Department without any thought of going into the particular aspect of the assessment; the scope of interference is not to set aside merely unfavourable orders and bring to tax some more money to the treasury; the Section is not meant to get at sheer escapement of revenue; and "prejudice" must be prejudice to the revenue administration. The Supreme Court, in Malabar Industrial Co. Ltd.⁵, held that this interpretation of the expression "prejudicial to the interests of revenue" by the Madras High Court, in Venkatakrishna Rice Company⁷, was too narrow to merit acceptance.

9. Top of Form The words "prejudicial to the interests of Revenue" are of wide import, and they should not be limited to a case where the order passed by the Officer can be considered to be one prejudicial to the Revenue administration as such. (MALABAR INDUSTRIAL CO. LTD. Vs. COMMISSIONER OF INCOME TAX, ; Hindu Bank Karur Ltd. Vs. Additional Commissioner of Income Tax,). The said expression could encompass, in the context of particular fact situations, prejudice to the interests of the Revenue in a broader sense too. (Bankatlal Satyanarayana Parikh and Co., Nizamabad Vs. Commissioner of Commercial Taxes, A.P., Hyd. and another, The wider implication of the expression "prejudicial to the interests of revenue" is exemplified in the words of the Supreme Court in Smt. Tara Devi Aggarwal Vs. Commissioner of Income Tax, West Bengal, Calcutta,

...The words of the section enable the Commissioner to call for and examine the record of any proceeding under the Act and to pass such orders as he deems necessary as the circumstances of the case justify when he considers that the order passed was erroneous insofar as it is prejudicial to the interests of the Revenue. It is not prejudicial to the interests of the Revenue only if it is found that the assessment for the year was disclosed on the basis that an income had been earned which is assessable. Even where an income has not been earned and is not assessable, merely because the assessee wants it to be assessed in his or her hands in order to assist someone else who would have been assessed to a larger amount, an assessment so made can certainly be erroneous and prejudicial to the interests of the Revenue. If so and we think it is so - the Commissioner u/s 33B has ample jurisdiction to cancel the assessment and may initiate proceedings for assessment under the provisions of the Act against some other assessee who according to the Income Tax authorities is liable for the income thereof....

(emphasis supplied).

10. The phrase "prejudicial to the interests of revenue" is not an expression of Article Understood in its ordinary meaning it is of wide import and is not confined to loss of tax. (Malabar Industrial Co. Ltd.⁵). It would depend upon the facts of each case, and there can be no universal formula to find out any such prejudicial error. Prejudice to the Revenue may be inferred not only from any finding that there was a loss of revenue, but also from the fact that the procedure employed was defective. (Hindu Bank Karur Ltd.⁸). The revisional jurisdiction is available only if the order sought to be revised is itself prejudicial to the interests of revenue and prejudice, if any, has to be proved by reference to that order only. (Power Dewas (H.H. Maharaja Raja) v. CIT (1982) 138 ITR 158 ; Bombay Ammonia (P) Ltd. v. State of Tamil Nadu (1976) 3 SCR 856; B.S. Parikh and Co. (2001) 122 STC 236 (A.P)). While exercising this power, the revisional authority must record a finding as to how the order under revision is prejudicial to the interests of revenue, and failure to do so would vitiate the order. (Commissioner of Income Tax Vs. Shantilal Agarwalla, ; Bankatlal Satyanarayana Parikh and Co., Nizamabad Vs. Commissioner of Commercial Taxes, A.P., Hyd. and another, He

should also mention, in the order, the material on the basis of which he has arrived at the conclusion. Failure to record reasons would vitiate any order that the revisional authority may pass in exercise of his powers of revision. (Commissioner of Income Tax Vs. Late Sunderlal (through Bankey Behari Lal), ; Commissioner of Income Tax Vs. R.K. Metal Works, ; Bankatlal Satyanarayana Parikh and Co., Nizamabad Vs. Commissioner of Commercial Taxes, A.P., Hyd. and another,

11. It is no doubt true that the Tribunal had observed that, in view of G.O. Ms. No. 910 dated 31.10.1999, the rate of tax is 8%. In the light of this finding, the submission that, since the rate of tax was 8% irrespective of whether the goods in question fell within the ambit of Entry 1 or Entry 83 of the First Schedule, no prejudice is caused to the revenue cannot be said to be without merit. It must, however, be borne in mind that the revisional authority had treated the petitioner's goods as falling within the ambit of Entry 1 of the First Schedule, and had levied tax at the rate of 13%. Exercise of jurisdiction by the Deputy Commissioner, u/s 20(2) of the Act, was on the premise that the rate of tax, applicable to goods falling within Entry 1 of the First Schedule, was 13%, and the revenue had suffered monetary loss on account of such goods being held to fall within the ambit of Entry 83 of the First schedule, and as being liable to tax at 8%. It cannot, therefore, be said that exercise of the power of revision by the Deputy Commissioner is without jurisdiction. That the Tribunal, in the appeal preferred against the order of the revisional authority, had subsequently held that the petitioners goods were liable to tax at 8% even though they fell under Entry 1 of the First Schedule, is of no consequence in determining whether the Deputy Commissioner had exceeded his jurisdiction in exercising his revisional powers u/s 20(2) of the Act.

12. The contention of the Learned Counsel that the Tribunal should have left open the question of classification, and the applicable entry, to be examined in a more appropriate case, in as much as the rate of tax is only 8% irrespective of whether the petitioners goods fell under Entry 1 or 83 of the First Schedule, merits acceptance. In cases where the matter under consideration is limited in its scope the Tribunal, having decided that issue, is not required to go into any other question. (National Aluminium Co. Ltd. Vs. The State of A.P. and Others, It was wholly unnecessary for the Tribunal to have examined the question of classification, whether the petitioners goods fell within Entry 1 or Entry 83 of the First Schedule, and to have recorded a finding that the petitioners goods fell under Entry 1 of the First Schedule.

13. Learned Special Standing Counsel for Commercial Taxes would, however, contend that, in as much as this contention was not urged before the Tribunal, this Court should not permit such a contention to be raised for the first time in revision proceedings before it. Section 22 of the APGST Act can be invoked only when the Tribunal has either decided erroneously, or has failed to decide, any question of law. (Shaik Basha v. State of Andhra Pradesh (1992) 14 APSTJ 121).

Arguments not raised, either before the lower authorities or the Tribunal, should not, ordinarily, be permitted to be raised at the stage of revision before the High Court. (State of A.P. v. Usha Breco Ltd, Calcutta (2001) 121 STC 621; Shaik Basha (1992) 14 APSTJ 121; The State of Andhra Pradesh v. Crown Castings (P) Limited, Hyderabad (1992) 14 APSTJ 145).

14. A perusal of the grounds of appeal before the Tribunal would belie the contention of the Learned Special Standing Counsel. It is evident therefrom that the petitioner had contended that the very initiation of revision, on the basis that the rate of tax on motor vehicle parts and accessories was 12+1%, was not tenable; the goods sold were machinery spare parts and were taxable under Item 83 of the First Schedule; and, even assuming that earthmoving equipments are motor vehicles, the Deputy Commissioner had failed to see that the rate of tax on motor vehicle spare parts was only 8% under G.O. Ms. No. 910 dated 31.12.1999. These grounds undoubtedly cover the contention urged before us. It cannot, therefore, be said that this contention has been raised for the first time in revision proceedings before this Court. It is not necessary for us, therefore, to examine whether this contention could have been raised for the first time in revision proceedings, u/s 22 of the APGST Act, as it is a pure question of law. The question whether spare parts, of earthmoving equipment, sold by the petitioner falls within Entry 1 or Entry 83 of the First Schedule is left open to be decided, in an appropriate case, by the authorities concerned.

15. With regards denial of concessional rate of tax on supply of spare parts by the petitioner to SCCL, it is necessary to note that, in partial modification of the orders issued in G.O. Ms. No. 38 dated 17.01.1997, the Government had issued G.O. Ms. No. 694 dated 10.09.1998. That G.O. Ms. No. 38 was later rescinded by G.O. Ms. No. 390 dated 12.06.2001, does not necessitate G.O. Ms. No. 694 dated 10.09.1998 to be deemed to have been rescinded as G.O. Ms. No. 390 dated 12.06.2001 makes no reference to the notification issued in G.O. Ms. No. 694 dated 10.09.1998. The Tribunal has committed an error of law in holding that SCCL was authorized to issue the certificate only till 12.06.2001, (the date on which G.O. Ms. No. 390 dated 12.6.2001 was rescinded), for allowing concessional rate of tax at 4%. The petitioner is entitled for the benefit of concessional rate of tax at 4% on such supplies even subsequent thereto as G.O. Ms. No. 694 dated 10.9.1998 cannot be deemed to have been rescinded merely because G.O. Ms. No. 38 dated 17.1.1997 was.

16. The order of the Tribunal is set aside to the extent indicated hereinabove and the TREVC is, accordingly, allowed.