(1994) 01 AP CK 0006

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 20849, 20852, 20853, 20854 and 20859 of 1993

Jampala Ram Gopal — APPELLANT

Vs

Assistant Commercial Tax Officer and Registering Authority and Others — RESPONDENT

Date of Decision : 29-01-1994

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 12, 12(10), 12(11), 12(7)

Citation : (1995) 97 STC 633

Hon'ble Judges : S. Dasaratharama Reddy, J;A. Lakshmana Rao, J

Bench : Division Bench

Judgement

A. Lakshmana Rao, J.—In all these writ petitions the validity of the notices dated December 18, 1993 issued to the respective petitioners u/s 12 of the Andhra Pradesh General Sales Tax Act, 1957 (for short "the Act'') read with rule 28 of the Andhra Pradesh General Sales Tax Rules, 1957 (for short "the Rules"), calling upon them to show cause why they shall not be required to furnish additional security which is equal to half the sales tax due for the year 1992-93, is questioned. Therefore, they are disposed of by a common order.

2. All the petitioners are dealers in turmeric. They got themselves registered u/s 12 of the Act in different years. At the time of registration, it is stated that each petitioner was asked to furnish security in a sum of Rs. 2,000 under sub-section (7) of section 12 of the Act and the same had been furnished in the prescribed manner. While so, the Assistant Commercial Tax Officer and the registering authority served the impugned notice dated December 18, 1993 on each one of them stating that the security furnished by them/him at the time of registration was found to be inadequate when compared to the volume of business done by them/him. It was, therefore, considered necessary to obtain additional security in order to ensure proper realisation of the tax and other dues payable under the Act and also for the proper custody and use of the forms issued to them/him from time to time. The petitioners were, therefore, called upon to show cause

why each of them shall not be required to furnish additional security for a sum which is equal to half the sales tax due for the year 1992-93, within seven days from the date of receipt of the notice. It was also mentioned in the notices that the petitioners can represent their case in person before the registering authority on any day during the said period of seven days.

3. Sub-sections (10) and (11) of section 12 of the Act, which are relevant for the purpose of this case are extracted hereunder :

(10) "Where it appears necessary to the authority granting a certificate of registration under this section so to do for the proper realisation of tax and other dues payable under this Act or for the proper custody and use of the forms referred to in sub-section (7) he may, at any time while such certificate is in force, by an order in writing and for reasons to be recorded therein, require the dealer, to whom the certificate of registration has been granted, to furnish within such time as may be specified in the order and in the prescribed manner such security, or, if the dealer has already furnished any security in pursuance of an order under this sub-section or sub-section (7) such additional security, as may be specified in the order for all or any of the aforesaid purposes."

(11) "No dealer shall be required to furnish any security under sub-section (7) or any security or additional security under sub-section (10) unless he has been given an opportunity of being heard and the amount of such security or additional security that may be required to be furnished shall not exceed the amount equal to tax payable under this Act, in accordance with the estimate of such authority, on the turnover of such dealer for the year in which such security or as the case may be, additional security is required to be furnished."

4. It is submitted by the learned counsel for the petitioners that the power under sub-section (10) of section 12 of the Act requiring a dealer to furnish additional security can be exercised only in a case where there is actual or possible evasion of tax by a dealer and that provision cannot be invoked merely on the ground of increase in the volume of business of a dealer resulting in the payment of larger sales tax. It is further urged that the show cause notice merely repeats the words occurring in sub-section (10) of section 12 without giving the reasons for invoking the power to call upon a dealer to furnish additional security. Therefore, according to the learned counsel, the impugned notices are arbitrary and vague and they deprive the petitioners of the right to file their effective objections to the show cause notices.

5. Before a registered dealer is asked to furnish additional security, two requirements have to be fulfilled : (1) The registering authority shall record his reasons for requiring a registered dealer to furnish additional security; and (2) such additional security is intended to ensure the proper realisation of tax and other dues payable under the Act or for the proper custody and use of the forms issued to him from time to time. Before passing an order recording the reasons, the registering authority is required under sub-section (11) of section 12 to give

a reasonable opportunity of being heard to the dealer. The additional security that may be required to be furnished by a dealer shall not exceed the amount equal to the tax payable for the year in which the additional security is required to be furnished.

6. In all the impugned notices, it is mentioned that there is increase in the volume of business carried on by the respective dealers and the security furnished by them/him at the time of registration is found to be inadequate to ensure proper realisation of the tax and other dues payable under the Act and proper custody and use of the forms issued to them/him from time to time. The mention of increase in the volume of business in the show cause notice cannot be said to be either irrelevant or extraneous to the purpose of ensuring proper realisation of the tax and other dues payable under the Act or the proper custody and use of the forms issued to the dealer from time to time. If a show cause notice is issued on the basis of such an information, it is for the dealer to raise their/his objections to it, and represent the case in person as to why they/he need not furnish any additional security. After hearing the dealer, the registering authority has to pass an order recording his reasons. There can be no doubt that the power conferred on the registering authority under sub-section (10) of section 12 of the Act shall be exercised for the purpose for which it was intended and any order passed by such authority shall not be either arbitrary or unreasonable. But, these considerations will be relevant only at the time of testing the validity of an order passed by the registering authority requiring a dealer to furnish additional security and not for judging the validity of the show cause notice.

7. The decision of this Court in P.C. Srinivasulu Chetty and Sons Co. Vs. State of Andhra Pradesh and Others, relied on by the learned counsel for the petitioners in our view has no application to the facts of the present case. In that case, one of the reasons mentioned in the show cause notice was that there was a prima facie case of evasion of tax by the dealer for the years 1979-80 and 1980-81. On the basis of the averments made in the counter-affidavit filed on behalf of the department, the learned Judges noticed that the assessments for the said years 1979-80 and 1980-81 had been completed by the date of issue of the show cause notice and no proceedings were initiated for re-opening, the assessments. Therefore, it was held that the notice ought not to have been issued on the facts of that case. In support of the contention that the discretionary power vested in the registering authority under sub-section (10) of section 12 has to be exercised in each case judiciously on sound principles and not arbitrarily, the learned counsel for the petitioners has cited a decision of the Division Bench of the Rajasthan High Court in Delhi Cloth & General Mills Co. Ltd. v. State of Rajasthan [1980] 45 STC 128. As we have already mentioned, the question of applying those principles arises only after the registering authority passes an order and not at the stage of issuing the show cause notice. In the case referred to above, the validity of an order passed by the registering authority fell for consideration. The question of applying the principles laid down in that decision does not arise

in the present cases which are directed against show cause notices.

8. For the reasons stated above, we are not inclined to admit the writ petitions. The petitioners shall file their objections to the show cause notices within one week from today, if not already filed. The registering authority shall consider the objections if any filed and pass appropriate orders in accordance with law, after giving an opportunity of being heard to the petitioners.

9. Subject to the above directions, the writ petitions are dismissed at the admission stage.

10. Petitions dismissed.

