(1980) 07 AP CK 0002

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Petition No''s. 5227 and 5228 of 1980

Karnatakam Govindappa Setty and Sons — APPELLANT

Vs

State of Andhra Pradesh — RESPONDENT

Date of Decision : 08-07-1980

Acts Referred:
Andhra Pradesh General Sales Tax Act, 1957 — Section 33C

Citation : (1980) 46 STC 510

Hon'ble Judges : V. Madhav Rao, J;Amareshwari, J

Bench : Division Bench

Advocate : S.R. Ashok, for the Appellant; Government Pleader for Home, for the Respondent

Judgement

Madhava Rao, J.—These two petitions are filed to direct the respondent to issue a direction to the Commercial Tax Officer to refund the tax amounts paid for the assessment years 1974-75 and 1975-76 to the petitioner pending disposal of the tax revision cases. In the affidavit filed in support of the petitions it was stated that against the order of the Assistant Commissioner, Kurnool, confirming the orders of the Commercial Tax Officer, Guntakal, for the assessment years 1974-75 and 1975-76, the petitioner filed appeals before the Sales Tax Appellate Tribunal disputing levy of tax on a turnover of Rs. 1,83,565.85 and Rs. 1,80,919 on the ground that the said turnover being one form of "mida" is not liable for tax under the Andhra Pradesh General Sales Tax Act.

2. The petitioner paid the entire tax as the authorities were pressing for payment of tax. Relying upon a decision of the Supreme Court in Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another, , the Tribunal allowed the appeals filed by the petitioner on 30th December, 1978. It is therefore contended that by virtue of the above orders, the petitioner is entitled to refund of Rs. 7,801.49 and Rs. 7,689 for the abovesaid assessment years. After the appeals were disposed of by the Sales Tax Appellate Tribunal, the petitioner filed an application on 2nd June, 1979, before the Commercial Tax Officer, Guntakal,

claiming refund of the amounts mentioned above and the Commercial Tax Officer, by his endorsement dated 5th July, 1979, informed the petitioner that the refund cannot be made as the orders of the Appellate Tribunal have been made the subject-matter of tax revision cases before the High Court and that the application would be considered after the tax revision cases are disposed of. It is also stated in the affidavit that if the tax is withheld, the petitioner will be subjected to hardship as it is denied of working capital.

3. The learned counsel for the petitioner submitted that the amounts cannot be withheld u/s 33-C of the Andhra Pradesh General Sales Tax Act, 1957, on the ground that the tax revision cases are pending before this Court.

4. Section 33-C of the Act reads as under :

"Power to withhold refund in certain cases. - Where an order giving rise to a refund to an assessee or licensee is the subject-matter of an appeal or further proceeding or where any other proceeding under this Act is pending, and the assessing or the licensing authority is of the opinion that the grant of the refund is likely to adversely affect the revenue, the assessing or the licensing authority may, with the previous approval of the Deputy Commissioner, withhold the refund till such time as the Deputy Commissioner may determine."

5. Section 33-C makes it abundantly clear that if any proceeding under the Act is pending against an order giving rise to a refund to an assessee or licensee and the assessing or the licensing authority is of the opinion that the grant of the refund is likely to adversely affect the revenue, the assessing or the licensing authority may withhold the refund till such time as the Deputy Commissioner may determine. But to do so the previous approval of the Deputy Commissioner has to be obtained fixing the time. The endorsement of the Commercial Tax Officer, Guntakal, dated 5th July, 1979, is as follows :

"With reference to their letter dated 2nd June, 1979, M/s. Karnatakam Govindappa Setty & Sons, Guntakal, are informed that the Government of Andhra Pradesh filed T.R.C. against the order of S.T.A.T., Hyderabad, in T.A. Nos. 242 of 1978 and 389 of 1978 dated 30th December, 1978. The question of refunding the tax as per the orders of the S.T.A.T., Hyderabad, will be considered after the disposal of T.R.C. by the High Court of Andhra Pradesh, Hyderabad."

6. The above endorsement makes it clear that the question of refunding the tax as per the orders of the Sales Tax Appellate Tribunal, Hyderabad, will be considered only after the disposal of the tax revision cases by this Court. In our view, it is contrary to the provisions of section 33-C of the Act. The pendency of the tax revision cases is not a sufficient ground for withholding the tax which was paid by the petitioner. No order of stay was obtained by the Commercial Tax Officer to that effect.

7. The learned Government Pleader submits that it is not necessary to obtain stay orders. When orders of stay have not been obtained, it becomes necessary

to consider the matter u/s 33-C of the Act. As already observed, section 33-C contemplates several conditions to be fulfilled before withholding the refund. When an application is filed for refund, the conditions laid down in section 33-C have to be taken into consideration before withholding the refund. This Court cannot direct the respondent to issue orders to the Commercial Tax Officer to pass an order for refund of the tax. Therefore, it is directed that the petition filed by the petitioner will be considered irrespective of the fact that the tax revision cases are pending before this Court.

8. The petitions are disposed of with the above direction. No costs.

9. Ordered accordingly.

