(2013) 08 AP CK 0053

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 31, 6260, 6261, 8214, 9247, 9257, 9273, 11117, 13857, 16178 and 17093 of 2013

M/s. RAK Ceramics (India) Private Limited APPELLANT

Vs

The Assistant Commissioner (CT)-VI RESPONDENT

Date of Decision : 06-08-2013

Acts Referred:

Citation : (2013) 6 ALT 723 : (2013) 57 APSTJ 53 : (2013) 66 VST 435

Hon'ble Judges : Kalyan Jyoti Sengupta, C.J;G. Rohini, J

Bench : Division Bench

Advocate : N. Venkataraman, for Sri S. Dwarakanath, for the Appellant; P. Balaji Varma, Special Standing Counsel for Commercial Tax, for the Respondent

Judgement

Kalyan Jyoti Sengupta, C.J.—All these writ petitions have been filed ventilating common grievance and raising common question of law. Therefore, these matters are being disposed of by this common judgment and order. The short fact leading to filing of the aforesaid writ petitions is as follows:

The petitioners and each of them are carrying on the business in different fields, as such they are registered dealers under the Andhra Pradesh Value Added Tax Act, 2005 (hereinafter referred to as ''the Act''). All those petitioners, while carrying on the business, have been purchasing Liquefied Petroleum Gas (LPG). Hence, the petitioners and each of them had hitherto been claiming input tax credit u/s 13 of the Act on the purchases of taxable goods from other VAT dealers. The State of Andhra Pradesh (hereinafter referred to as "State") has issued a notification in G.O.Ms. No. 503, dated 08-05-2009 amending certain Schedules and also Rules to the Act w.e.f. 01-05-2009. One of the amendments is insertion of clause (q) in Rule 20(2) of the Andhra Pradesh Value Added Tax Rules, 2005 (hereinafter referred to as "the Rules"). The said insertion is as follows:

Furnace Oil, LSHS and other similar fuels, used in the furnaces and boilers of the factories or manufacturing or processing units.

The respondent-authorities, in view of the said insertion, are treating the LPG as being other similar fuels within the aforesaid amendment and thereby they are refusing to allow the input tax credit to each of the petitioners-dealers. Accordingly, the respondent-authorities have been assessing the tax and passing assessment orders. It appears that the respondent-authorities treated the LPG as being other similar fuels under the said amended Rules relying on the decision of the Advance Ruling Authority (ARA) made in the case of M/s. Hindustan Unilever Limited in AR.Com. 6/2011, dated 18-07-2012 u/s 34 of the said Act.

2. It is the contention of all the petitioners that the LPG cannot be treated to be other similar fuels, as the same is not used in the furnaces or boilers of the factories or manufacturing units or processing units. According to them, similar fuels must constitute and mean to that of the nature and character of the furnace oil and LSHS. Besides, the mode of usage is not the same as is described in the said amended Rules because none of the petitioners is using the LPG in the factories or manufacturing or processing units. They claim that the decision of the ARA in the case of M/s. Hindustan Unilever Limited holding that the LPG, which is a fuel, purchased from other dealers and used for the purpose of heating in the oven and in the manufacturing unit or processing unit will not be eligible for input tax credit, as per Rule 20(2)(q) of the Rules, is totally absurd and is patently wrong conclusion arrived at in the factual matrix of each case.

It is their contention further that the LPG cannot be covered by Rule 20(2)(q) of the Rules since it is not akin to furnace oil and LSHS in terms of the properties, configuration and nature, and hence, it cannot come within the scope of "other similar fuels" in Section 20(2)(q) of the Rules. Applying the principle of ejusdem generis, the expression "other similar fuels" should be any other fuels, which are in liquid state having similar properties and characteristics like furnace oil and LSHS, but not LPG, which is in gaseous state and has different properties. They further contend that Rule 20(2)(q) applies if LPG is used in the furnaces and boilers of the factory or manufacturing or processing units and not by mere use in manufacturing unit. The expression "furnaces and boilers" applies to factories or manufacturing or processing units and cannot be restricted to factories only. The Rule would apply only where LPG is used in furnaces and boilers and not elsewhere. It is further stated by all the petitioners that binding effect of the decision of ARA is lost since the said decision relied upon by the respondent-authorities, while passing the order of assessment and demanding tax, is subject matter of Appeal in T.A. No. 341 of 2012 filed by M/s. Hindustan Unilever Limited and hence, the respondent-authorities cannot proceed on the basis of such decision of the ARA.

3. Though all the above points have been taken primarily, at the time of hearing, learned counsel for the petitioners did not advance those arguments and restricted their arguments on the following points:

4. It is submitted that the ARA is a concept really borrowed from Chapter XIXB of the Income Tax Act, 1961. Learned counsel for the petitioners submits further

that the decision of the ARA would be binding, as it appears from Section 245S of the Income Tax Act, on the following persons and situations:

(a) on the applicant who had sought it;

(b) in terms of the transaction in relation to which the ruling had been sought; and

(c) on the Commissioner, and the income tax authorities subordinate to him, in respect of the applicant and the said transaction.

5. Then, it is contended that the advance ruling referred to in sub-section (1) shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced. Learned counsel submits further that in substance, the binding effect of the decision of ARA, as it appears from Section 245S, is upon the applicant who had sought for the Ruling, and on the Commissioner and the income tax authorities subordinate to him, and in respect of the transactions in relation to which the Ruling had been sought. Such decision will not be applicable to third parties irrespective of the nature of the transaction takes place. Going by the aforesaid analogy, he submits that if the provision of Section 67 of the Act is read and construed carefully, it would appear that the decision of the ARA will be binding upon the applicant, who had sought for it, and all the officers other than the Commissioner, and not upon the third party dealer. Therefore, the decision of ARA cannot be binding upon the petitioners and each of them. Hence, the impugned assessment orders passed relying upon the decision of ARA is liable to be set aside.

6. Learned counsel for the petitioners has cited a decision of the Supreme Court in case of Columbia Sportswear Company Vs. Director of Income Tax, Bangalore, to support his arguments as above. He submits that the Supreme Court has allowed and explained the scope and purport of Section 245S of the Income Tax Act and it was held that the decision of ARA is binding upon those persons which are mentioned in Section 245S. Since the language mentioned in Section 245S of the Income Tax Act and Section 67 of the Act are para materia same, the above decision of the Supreme Court will be applicable.

7. Learned counsel for the State, in counter to the aforesaid arguments, contends that it is incorrect that the provision of Section 67(4) of the Act is similar to that of Section 245S of the Income Tax Act. He, however, concedes that the provision of Section 245S provides the persons upon whom the decision of the ARA will be binding and it clearly shows that the third parties are not bound by such decision. But, while reading the language of Section 67(4) of the Act, it will clearly emerge that the decision of the ARA not only binds the applicant, who had sought for clarification, but also the third parties and it is clear from clause (ii) of sub-section (4), which mentions in respect of ''goods'' unlike the provision of Section 245S of the Income Tax Act. Therefore, he contends that the decision of the ARA in Hindustan Unilever Limited''s case clarified that LPG is covered by the said amended provisions of the Rules to deny

the benefit of input tax credit. In Hindustan Unilever Limited''s case, the subject matter was LPG as it is in all the cases on hand. Hence, by the word ''goods'', denote whoever purchases LPG will be bound by the aforesaid decision of the ARA. Learned counsel relying upon a decision of a Division Bench of this Court in case of Tirupati Chemicals Vs. The Deputy Commercial Tax Officer and Others, contends that the aforesaid judgment is the authority to hold what has been contended by him. The orders passed relying upon the decision of the ARA are perfectly lawful and the remedy of all the petitioners lies before the appropriate forum by way of appeal and the writ Court cannot entertain these actions in view of the alternative remedy.

8. After considering the rival contentions, the only point, which has been called upon to be decided by this Court, is whether going by the language in Section 67(4) of the Act reading with Section 245S of the Income Tax Act, the decision of the ARA will bind the third parties or not?

9. In the context of the above, it is now necessary to examine the scope and purport of sub-section (4) of Section 67 of the Act, which reads as follows:

(4) The order of the authority shall be binding:-

(i) on the applicant who had sought clarification;

(ii) in respect of the goods or transaction in relation to which a clarification was sought; and

(iii) on all the officers other than the Commissioner" (emphasis supplied)

10. Upon plain reading of the above provision, the decision of the ARA would be binding (a) on the applicant who had sought for clarification, (b) on all the officers other than the Commissioner, and (c) in respect of the goods or transactions in relation to which a clarification was sought. The word ''or'' denotes for both. Therefore, decision of the ARA will be binding upon any person, who has dealt in the same goods in relation to which decision of ARA is rendered, irrespective of the fact that any decision is sought for. To clarify this, the decision of the ARA will be binding upon any dealer, even though he has not applied for ruling, if he deals in the same goods in relation to which the decision has been rendered. Since the literal reading of the above statutory provisions emerges an intelligible result, the Court cannot interpret the same in other way. It is settled proposition of law made by a catena of decisions of the Supreme Court that when a literal reading of the words used by the Legislature produces an intelligible result, it would be impermissible to call in aid any external aid of construction to find out the hidden meaning. To quote a few of them are in the cases of Raghunath Rai Bareja and Another Vs. Punjab National Bank and Others, (2004) 266 ITR 1 Delhi Fin. Corpn. and Another Vs. Rajiv Anand and Others, and Col. D.D. Joshi and Others Vs. Union of India (UOI) and Others, It is also settled proposition of law that where the words of the statute are clear and unambiguous, recourse cannot be had to the principles of interpretation other

than the literal rule [See Swedish Match AB and Another Vs. Securities and Exchange Board, India and Another,

11. In all these cases, the goods in question and further dealt in is LPG. In Hindustan Unilever Limited''s case, the ARA has given a decision that the LPG is one of the categories of other similar fuels, hence, the said amended Rule is applicable in order to disqualify any dealer to get the input tax credit. Therefore, going by the aforesaid interpretation, although the petitioners are non-applicants, the decision is binding upon them. We are unable to accept the contention of the learned counsel for the petitioners that the provision of subsection (4) of Section 67 of the Act is similar to that of the provision of Section 245S of the Income Tax Act, as it will appear from the comparative study of both the provisions that the same are substantially dissimilar. We, therefore, set out the provision of Section 245S of the Income Tax Act as follows:

245S. (1) The Advance ruling pronounced by the Authority u/s 245R shall be binding only-

(a) on the applicant who had sought it;

(b) in respect of the transaction in relation to which the ruling had been sought; and

(c) on the Commissioner, and the income tax authorities subordinate to him, in respect of the applicant and the said transaction.

(2) The advance ruling referred to in sub-section (1) shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

12. On a plain reading of the above provision, it would be crystal clear that the persons, who shall be bound by the said authority, are limited because the word ''only'' after the word ''binding'' makes it clear that it would be binding on the applicant who had sought it, thereby no other person, and again on the Commissioner and the other income tax authorities subordinate to him in respect of the applicant and the said transaction. Therefore, it is binding in case of particular transaction where any assessee or income tax authorities were the parties. It is very significant that the word ''goods'' like in Section 67(4) of the Act is missing in Section 245S of the Income Tax Act. Apart from this, the provisions of those two sections are similar, but it has been made significant difference with the insertion of the word ''goods'' in section 67(4) of the Act.

13. Learned counsel for the petitioners has relied on a decision of the Supreme Court in COLUMBIA SPORTSWEAR COMPANY''S case (supra) to support his contention that the decision of ARA has no manner of application on the issue involved herein. The Supreme Court in that case decided the only question whether the Advance Ruling pronounced by the Authority can be challenged by the applicant or by the Commissioner or any income tax authority subordinate to him under Articles 226 or 227 of the Constitution before the High court or under

Article 136 of the Constitution before the Supreme Court. The Supreme Court, while examining the provisions of entire Chapter-XIXB of the Income Tax Act, found that the ARA is a body exercising judicial power conferred on it by Chapter-XIXB of the Income Tax Act and is a Tribunal within the meaning of the expression in Articles 136 or 227 of the Constitution. The Supreme Court in that case had decided that upon whom the decision of ARA will be binding. The observation in paragraph-15 of the said report is apposite in this context:

As Section 245S expressly makes the advance ruling binding on the applicant, in respect of the transaction and on the Commissioner and the income tax authorities subordinate to him, the Authority is a body acting in judicial capacity.

14. We think, on the other hand, that the decision of the Division Bench of this Court, cited by the learned counsel for the respondents, in TIRUPATI CHEMICAL''S case (supra) is extremely helpful. In that case, the Court dealt with the questions upon whom the Advance Ruling u/s 67(4) of the Act would be binding. At page 91 of the report, the Court formulated one of the points as follows:

Is the ruling of the ARA binding on the dealers other than the applicant dealer who sought the clarification.

15. In the above case, the Division Bench of this Court, while considering the same arguments as advanced here, in clear terms came to the finding at page-97 of the report as follows:

On a literal construction of clause (ii) of Section 67(4), it is evident that the order of the ARA would be binding "in respect of the goods or transactions in relation to which a clarification was sought" irrespective of whether such goods or transactions relate to the applicant or other dealers.

Again at page 98, the Court reiterated the same finding as follows:

The legislature has, u/s 67(4)(ii), made the ruling of the ARA binding in respect of goods or transactions in relation to which a clarification is sought, and has not restricted its applicant only to the applicant. Notwithstanding that the clarification has been given at the behest of the applicant-dealer, if the goods or transaction of another dealer are identical to those for which a clarification was sought, the ruling of the ARA would bind such other dealers also.

16. The aforesaid expressions in the previous decision clearly lend support to our finding as above.

17. It is contended in the petitions also that the decision of the ARA has been rendered only at the instance of Hindustan Unilever Limited and the same is made applicable to these petitioners who were not heard at all. Meaning thereby, the said decision is hit by the principle of natural justice, as the petitioners and each of them were not being heard at the time of rendering the Advance Ruling. It is very unfortunate that the Legislature has made the Ruling binding upon the

other dealers, who have not asked for clarification. When the Legislature makes a provision not intending to apply the principles of natural justice, this has to be accepted howsoever unpleasant it is. It is settled proposition of law that the Legislature can make such provision in its own wisdom, and no legislation can be held to be invalid or for that matter, the provisions contained therein shall be held to be constitutionally invalid because of the missing of the principle of natural justice.

18. The fundamental rule of construction of a taxing statute is not basically different from that of any other statute.

The intention of the Legislature is to be gathered from the language employed having regard to the context in connection with which it is employed. The primary rule of construction is that the intention of the legislation must be found in the words used by the Legislature itself. [See AIR 2003 SC 2103

It is also settled proposition of law that the Legislature is deemed to intend and mean what it says. The need for interpretation arises only when the words used in the statute are, on their own terms, ambivalent and do not manifest the intention of the Legislature [See I.T.C. Ltd. Vs. Commissioner of Central Excise, New Delhi and Another, . Therefore, the Court cannot intend otherwise than the Legislature. It is also settled that the Courts should not, ordinarily, add words to statute or add words into it, which are not there, especially when a literal reading thereof produces an intelligible result [See Delhi Fin. Corpn. and Another Vs. Rajiv Anand and Others, The court cannot rewrite, recast or reframe the legislation as it has no power to do so. Even if there is a defect or an omission in the statute, the Court cannot, ordinarily, correct the defect or supply the omission. [See Union of India and another Vs. Deoki Nandan Aggarwal, Smt. Shyam Kishori Devi Vs. Patna Municipal Corporation and Another, ; Satheedevi Vs. Prasanna and Another,

19. Under the circumstances as above, the provision of the statute has to be accepted and applied as it is.

Of course it is to be noted that the decision means, decision rendered on the ratio and that part is binding. Such decision or judgment of the Supreme Court or High Courts in a particular point of law is binding upon not only the parties thereto but also the non-parties on a similar identical point although they are not heard. It seems in this piece of legislation, the same legal principle has been made applicable.

20A. In view of the foregoing discussion, we hold that decision of ARA rendered on the application of Hindustan Unilever Limited in AR.Com. 6/2011 dated 18-07-2012 is binding upon other non-applicant dealers who are dealing in LPG until it is set aside.

20. Another question that deserves consideration is whether the pendency of appeal against the decision of ARA before appropriate Tribunal has got any

impact as to applicability of the same.

21. It would appear from the proviso of clause (iii) of sub-section (4) of Section 67 of the Act that if the dealer, at whose instance the ruling was rendered, files appeal, the binding effect of the same ceases temporarily. For proper appreciation on this aspect, we reproduce the said proviso as follows:

Provided the dealer does not file an appeal before Sales Tax Appellate Tribunal within 30 days of the Ruling in the manner prescribed.

22. In the decision of this Court in TIRUPATI CHEMICAL''S case (supra), at the bottom of page 100, it has been observed in similar lines. Thus upon reading of the said proviso, we are of the view that the said decision of the ARA, so long as the appeal is not decided, cannot be enforced though it is binding, meaning thereby, it operates as stay automatically. We have to conclude that since the Hindustan Unilever Limited has already preferred an appeal and the same is pending, naturally the decision of the ARA will automatically remain stayed, but that does not mean that the decision is obliterated and erased, and so long as it is not set aside, it remains, but may not be operative. Thus the orders, which have been passed relying on the decision of the ARA, will not be operative to the extent of which reliance has been placed.

23. Upon reading of the entire machinery of Section 67 of the Act, it appears that the petitioners, being non-parties in the said Advance Ruling proceedings, cannot prefer any appeal directly to the Tribunal against the decision of the ARA thereunder, but their remedy lies to prefer appeal u/s 33 after preferring an appeal u/s 31 of the Act. Meaning thereby, the decision of ARA can be challenged before the appellate Tribunal in the appeal itself.

24. With the foregoing discussion as above, we dispose of the writ petitions giving liberty to all the petitioners to resort to alternative remedy in accordance with law as may be advised. We have not decided the case on merits nor we have decided the legality and validity of the decision of the ARA, as very subject is pending in appeal before the Tribunal and the parties can very well wait for the decision of the Tribunal or they can approach the Tribunal, after getting their first appeal dismissed, to have analogous hearing with the hearing of the appeal preferred by Hindustan Unilever Limited. 26. In the event, the petitioners prefer an appeal in terms of this order within a period of thirty days from the date of this order, the Tribunal shall exclude the time during which the writ petitions were pending for entertaining the appeals. There will be no order as to costs. Miscellaneous Petitions pending, if any, shall stand closed.