

(2012) 01 AP CK 0053

In the Andhra Pradesh High Court

Case No : Tax Revision Case No"s. 72 of 2011

M/s. Swastic Oleachems Ltd., 18-2-45/3, Chandrayangutta,
Hyderabad

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 27-01-2012

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 14, 14(4), 19, 19(1), 21(1)
Andhra Pradesh General Sales Tax Rules, 1957 — Rule 17(5A), 33(1), 59
Civil Procedure Code, 1852 — Section 582A
Court Fees Act, 1870 — Section 28

Citation : (2012) 01 AP CK 0053

Hon'ble Judges : V.V.S. Rao, J;B.N. Rao Nalla, J

Bench : Division Bench

Advocate : S.R. Ashok, For Sri P. Vijay Kumar, for the Appellant; P. Balaji Varma, S.C. For Stat, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao

1. The petitioner, who is a registered dealer under both the Andhra Pradesh General Sales Tax Act, 1957 (the APGST Act) and the Central Sales Tax Act, 1956 (the CST Act) on the rolls of the Commercial Tax Officer, Special Commodities Circle, Hyderabad (CTO), is engaged in the manufacture and sale of steric acid vanaspati. They were sanctioned industrial incentive (Sales Tax deferment) to the extent of Rs. 14,95,62,130/-. For the assessment year 2001-2002, the CTO completed the assessment under both the Acts in March, 2005. Being aggrieved, the petitioner filed appeals before the Appellate Deputy Commissioner, Commercial Taxes, Punjagutta (ADC). The two separate appeals were rejected for non-compliance with the mandatory procedural requirement of the law. The dealer then filed further appeals before the Sales Tax Appellate Tribunal (STAT). The two appeals being T.A. No. 361 of 2007 in relation the assessment under the APGST Act and T.A. No. 362 of 2007 relating to the assessment under the CST

Act were dismissed by two separate orders on 16.3.2011. T. Rev. C. No. 72 of 2011 is filed against T.A. No. 361 of 2007 and T. Rev. C. No. 88 of 2011 is filed against T.A. No. 362 of 2007. The brief background facts leading to filing of these two revision cases is as follows. For the assessment year 2001-2002, the dealer filed returns. They submitted certificate of Chartered Accountant in Form XXXVI and Statement in Form XXXVII under Rule 17(5A) of the APGST Rules, 1957 along with necessary statements. As per the orders of the Government in G.O. Ms. No. 354, dated 29.5.2001 in the usual course the assessing authority has to accept the turnover furnished in the statements as certified by the Chartered Accountant. The CTO found the statements in Form AR-I, AR-II, AR-III and AR-IV are not correct and revealed irregularities and omissions. Therefore a show cause notice was issued to the dealer who then filed objections along with G-Forms, C-Forms and statements. After considering the objections and verifying the records the assessment, was completed duly determining the incentive availed as well as the balance deferment to be availed vide proceedings dated 21.3.2005 regarding APGST and proceedings dated 30.3.2005 regarding CST.

2. The dealer filed two appeals on 12.7.2005 u/s 39(1) of the APGST Act. They did not, however, enclose the proof of payment of 12.5% of disputed tax as required under the second proviso to Section 19(1) of the said Act. The ADC, therefore, issued a check memo which was served on the authorized representative of the dealer on 15.7.2005. Even after expiry of about 7 months, the dealer did not produce proof of payment of 12.5% of the disputed tax. Therefore the appeals were rejected on 15.2.2006. As noticed supra, the dealer unsuccessfully filed appeals u/s 21(1) of the APGST Act before the STAT.

3. The Senior Counsel for the petitioner would contend that the STAT was not justified in holding that the petitioner committed default in complying with the second proviso to Section 19(1) of the APGST Act when the petitioner under the relevant proceedings of the Commissionerate of Industries sanctioning incentive (Sales Tax deferment) is deemed to have made the payment of entire tax. Nextly it is contended that the second proviso to Section 19(1) of the APGST Act having been inserted by the A.P. Act No. 3 of 2002 with effect from 30.11.2001 cannot be made applicable in respect of an appeal before the ADC/STAT relating to a sales tax dispute prior to 30.11.2001.

4. We have given serious consideration to the submissions made by the petitioner. For reasons more than one both the submissions do not commend to the Court. Indisputably the assessments were served on the dealer on 13.6.2005 and the appeals were filed before the ADC on 12.7.2005 u/s 19(1) of the APGST Act, which as amended by the A.P. Act No. 8 of 1997 with effect from 04.1.1997 and the A.P. Act No. 3 of 2002 with effect from 30.11.2001 read as under.

Section 19. Appeals:--

(1) Any dealer objecting to any order passed or proceeding recorded by any authority under the provisions of the Act other than an order passed or

proceeding recorded by a an Additional Commissioner or Joint Commissioner, Deputy Commissioner under sub section (4C) of Section 14 may within thirty days from the date on which the order or proceeding was served on him, appeal to such authority as may be prescribed:

Provided that the appellate authority may within a further period of thirty days admit an appeal preferred after a period of thirty days if he is satisfied that the dealer had sufficient cause for not preferring the appeal within that period.

(Substituted by the A.P. Act No. 8 of 1997 with effect from 04.1.1997)

Provided further that an appeal so preferred shall not be admitted by the appellate authority concerned unless the dealer produces proof of payment of tax admitted to be due, or of such installments as have been granted, and the proof of payment of twelve and half per cent of the difference of the tax assessed by the assessing authority and the tax admitted by the appellant, for the relevant assessment year, in respect of which the appeal is preferred.

(Substituted by the A.P. Act No. 3 of 2002 with effect from 30.11.2001)

5. A plain reading of the above provisions would reveal that to be a valid appeal, it should satisfy twin conditions of being filed within 30 days and the appeal being accompanied by proof of payment of 12.5 %) of disputed tax. A Division Bench of this Court to which one of us (VVSR, J) is a Member, in *M/s. Ankamma Trading Company v The Appellate Deputy Commissioner (CT), Guntur*¹ summarized the effect and purport of Section 19(1) of the APGST Act in the following terms.

While the first proviso to Section 19(1) of the Act was substituted by A.F. Act 8 of 1997 with effect from 4.1.1997, the second proviso thereto and the first proviso to Section 21(2) were substituted by A.P. Act 3 of 2002 with retrospective effect from 20.] 1.2001. The twin conditions of a valid appeal u/s 19(1) of the Act are (1) in the appeal, the dealer should have objected to an order passed or proceeding recorded by an authority under the provisions of the Act, other than an order passed u/s 14(4)(c) thereof; and (2) the appeal should have been preferred by the dealer, to the prescribed authority, within 30 days from the date on which the order or proceeding was served on him. Under Rule 33(1) of the 1 (2011) 53 APSTJ 1 : (2011) 44 VST 189 (APAPGST Rules, and Rule 59 of the APVAT Rules, an appeal lies to the Appellate Deputy Commissioner against an order passed or proceeding recorded by an officer not above the rank of Assistant Commissioner. If an appeal is preferred within 30 days, from the date of receipt of an order passed or proceeding recorded by the authority, the appellate authority is required to hear and adjudicate the appeal on its merits, subject to fulfillment of the other conditions prescribed in the Act and the Rules.....The first proviso to Section 19(1) confers discretion on the appellate authority to admit an appeal preferred by a dealer beyond 30 days of receipt of the order passed by the authority. Exercise of such discretion is fettered by two conditions (1) the appeal ought to have been preferred within a further period of

30 days, after the period of 30 days from the date of receipt of the order passed by the authority; and (2) the appellate authority must be satisfied that the dealer had sufficient cause for not preferring the appeal within the original period of 30 days prescribed u/s 19(1) of the Act. It is only if the appeal is preferred between the 31st and 60th day from the date of receipt of a copy of the order passed by the authority, and the dealer has shown sufficient cause for not filing the appeal within the prescribed period of 30 days u/s 19(1) of the Act, can the appellate authority exercise discretion to admit the appeal. Such exercise of discretion to admit the appeal is neither ministerial nor a mere formality. If sufficient cause is not shown, the appellate authority is not obliged to condone the delay. The appellate authority does not have the discretion to admit an appeal filed after expiry of 60 days, from the date of receipt by the dealer of a copy of the order passed against him, or to decide such an appeal on its merits even if sufficient cause is shown by the dealer for not having preferred the appeal within the original period of 30 days.

6. Dealing with the question of curability of defect in payment of the tax stipulated in the second proviso, the Division Bench rejected the contention that the appeal cannot be rejected for non-payment of the tax under the second proviso if it is filed within the time stipulated under the first proviso to Section 19(1) of the APGST Act observing as under.

Unlike Section 28 of the Court Fees Act, and Section 582-A of the CPC, 1882, there is no provision either under the APGST Act or the A.P. VAT Act permitting payment of the prescribed tax beyond 60 days, and to treat such belated payment as having been made at the time of filing of the appeal itself. Reliance placed on Mannan Lal Vs. Chhotaka Bibi, (Dead) by Lrs. B. Sharda Shankar and Others, is, therefore, misplaced, and the defect in belated payment of the admitted tax/12.5% of the disputed tax, beyond sixty days of receipt of a copy of the assessment order, can neither be cured nor be treated as having been paid at the time when the appeal was originally filed.

7. Therefore, in this case, the petitioner/dealer did not comply with the second proviso while filing appeal before the ADC and, therefore, the order of the ADC and the order of the STAT upholding the former cannot be faulted.

8. The submission of the petitioner that the second proviso to Section 19(1) of the APGST Act as substituted by the A.P. Act No. 3 of 2002 with effect from 30.11.2001 cannot be applied to the petitioner's case is devoid of any merit. Indisputably the disputed assessment is for 2001-2002. There is also no dispute that the dealer filed the necessary statements and forms after January, 2003, and the CTO, who passed orders on 21.3.2005. The appeal was filed on 12.7.2005 by which time the amended second proviso was very much part of the statute book. The remedy of appeal is not a matter of right. It is a right conferred by the statute and it is axiomatic that the right of appeal can be availed only after fulfilling the conditions laid down in the statute. Before substitution of the second proviso, every appeal has to be filed in accordance

with Rule 33(1) of the APGST Rules, and such appeal shall be accompanied by declaration in Form 1A, which contains a statement of the dealer that the tax admitted to be due or installments so granted have been paid and the declaration must contain the particulars of cheque/demand draft evidencing the payment of tax. Except fettering the discretion of the appellate authority in the matter of admitting the appeal for further hearing the amendment has not brought in any major change. Therefore even if the dispute is with regard to the assessment year 2001-2002 as the petitioner filed appeal only on 12.7.2005 the law as on that date must be applied and the argument of the non-applicability of the amended provision cannot be countenanced.

9. Whether the petitioner can take shelter under the order of the Commissionerate of Industries in sanctioning the incentive (Sales Tax deferment)? The answer must be in the negative. In Ankamma Trading Company this Court decided a batch of five writ petitions. One of them, being W.P. No. 27885 of 2010, was also a case where the dealer therein was availing the benefit of tax deferment and for that reason did not comply with the second proviso to Section 19(1) of the APGST Act. Even the said writ petition was also dismissed by this Court observing as under.

As a result it must be held that payment of the admitted tax/12.5% of the disputed beyond the period of 60 days, from the date of receipt of a copy of the order of the assessing authority, would disable the appellate authority from admitting the appeal. As in all the cases, which form part of this batch, payment of the admitted tax/12.5% of the disputed tax is beyond the aforesaid time limit, all the Writ Petitions must fail.

10. Furthermore the petitioner, in these cases, has annexed the revised final eligibility certificate fixing eligibility for sales tax deferment issued by the Commissionerate of Industries. Clause 11 (ii) thereof categorically makes the incentive subject to the condition that, "the sales tax incentive should be utilized for the deferment of industry only and should not be utilized for any other purpose". Therefore, the plea of the petitioner that by reason of incentives sanctioned to them the disputed tax deemed to have been paid and, therefore, the condition that the proviso to Section 19(1) of the APGST Act stands waived is misconceived and cannot be accepted. The STAT has also considered this aspect and, in our considered opinion, came to correct conclusion. In the result, for the above reasons, these two Tax Revision Cases fail and are accordingly dismissed without any order as to costs.