(2006) 01 AP CK 0004

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 21526 of 1996, 15510 of 1998, 15081 and 16073 of 2000 and 9242, 24990, 25457 and 27455 of 2005

New Kamal Bar and Cafe APPELLANT

Vs

State of A.P. and Another RESPONDENT

Date of Decision : 27-01-2006

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 12, 12(7)
Andhra Pradesh General Sales Tax Rules, 1957 — Rule 28(8)

Citation : (2007) 6 VST 421

Hon'ble Judges : D. Appa Rao, J;Bilal Nazki, J

Bench : Division Bench

Advocate : M.V.K. Moorthy, D.V. Sitharam Murthy, P. Lakshma Reddy, M.V.J.K. Kumar, S. Chakrapani and Bhaskar Reddy Vemireddy, for the Appellant; K. Raji Reddy, Special Standing Counsel for Commercial Taxes and D. Kodanda Rama Murthy, for the Respondent

Final Decision : Allowed

Judgement

Bilal Nazki, J.—All these writ petitions raise common questions of law and fact and therefore, they are being disposed of by this common order.

2. Writ Petition No. 9242 of 2005 has been filed by a third party, whereas the other writ petitions have been filed by the sureties. The question which need to be answered in all these writ petitions is whether the recoveries ordered against the sureties, vide impugned orders of the respondents, are justified or not.

3. It is seen that notices and sale proclamations in all the cases have been made with regard to the property belonging to the sureties for the years for which they did not stand as surety. Some of them had given sureties about a decade before and it is submitted by the learned Counsel appearing for the petitioners that all sureties given, shall have to be construed as sureties against the assessment of tax for a period of one year, as estimated by the dealer himself. Reliance is placed on Section 12 of the Andhra Pradesh General Sales Tax Act, 1957

(hereinafter referred to as "the Act"). Sub-section (7) of Section 12 lays down:

12(7) : Where it appears necessary to the authority to whom an application is made under Sub-section (6) so to do for the proper realisation of the tax and other dues payable under this Act, or for the proper custody and use of the forms referred to in this Act, the rules made and the notifications issued thereunder, he may by an order in writing and for reasons to be recorded therein, impose as a condition for the issue of a certificate of registration a requirement that the dealer shall furnish in the prescribed manner and within such time as may be specified in the order such security as may be specified for all or any of the aforesaid purposes.

Rule 28(8) lays down:

The registering authority may require an applicant for registration to furnish within such time as may be specified by such authority security not exceeding an amount equal to the tax payable under this Act for a year as estimated by him, for the proper realisation of the tax and other dues payable under this Act and/or for the proper custody and use of the forms referred to in the Act, the rules made and the notification issued thereunder.

4. It is submitted by the learned Counsel for the petitioners that the registering authority may require an applicant for registration, to furnish guarantees or surety for proper realisation of tax and other dues for a year, as estimated by the assessee.

5. Our attention is also drawn to form D, which, under Clause 19, lays down:

19. The estimated total turnover for the year in which application is submitted.

6. So, the effect of Section 12(7) , Rule 28(8) and Clause 19 in form D makes it clear that if a surety is given by a person on behalf of an assessee, that surety will remain in force against tax payable for a year, as estimated by the assessee. This view has already been taken by this Court earlier in Writ Petition No. 17017 of 2002 [Gullapudi Someswara Rao v. Commissioner of Commercial Taxes [2007] 6 VST 361].

7. Following the same judgment, we allow these writ petitions and quash the impugned orders. No order as to costs.

