(2007) 03 AP CK 0088

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 26389 of 2005, 20623 and 22662 of 2006 and 1957 of 2007

P. Venkateswarlu APPELLANT

Vs

Commissioner Tax Officer and Others RESPONDENT

Date of Decision : 20-03-2007

Acts Referred:
Andhra Pradesh General Sales Tax Act, 1957 — Section 12(7)
Andhra Pradesh General Sales Tax Rules, 1957 — Rule 28(14), 28(8)

Citation : (2008) 14 VST 245

Hon'ble Judges : Nooty Ramamohana Rao, J;Bilal Nazki, J

Bench : Division Bench

Advocate : Shaik Jeelani Basha, M.V.J.K. Kumar and V. Bhaskar Reddy, for the Appellant; A.V. Krishna Koundinya, Special Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Bilal Nazki, J.—All these writ petitions raise same questions of law and fact. Therefore, they are being disposed of together by this common order. Facts are taken from W. P. No. 1957 of 2007.

Heard learned Counsel for the parties.

2. These writ petitions have been filed seeking a direction that respondent Nos. 1 and 2 should not insist for payment of arrears of tax pertaining to third respondent from the petitioner and should not take any steps to recover the arrears of tax allegedly due from respondent No. 3 for the years 1994-95 and 1995-96. The counsel for the petitioner submits that he stood surety for respondent No. 3 for the year 1994-95 and an amount of Rs. 11,225 was outstanding, which, he had already paid. He submits that his surety stood for one assessment year and his surety with regard to respondent No. 3 was not perpetual and it could not be perpetual as has been held by two Division Benches of this Court in two judgments. One of the judgments passed by this Court is in New Kamal Bar & Cafe, Hyderabad v. State of A.P. [2007] 6 VST 421 : [2006] 42

STJ 77 Ap and another judgment was passed in Writ Petition No. 17017 of 2002 [Gullapudi Someswara Rao v. Commissioner of Commercial Taxes, Hyderabad [2007] 6 VST 361 (AP)]. In these judgments, this Court was of the view that the effect of Section 12(7) of the Andhra Pradesh General Sales Tax Act, 1957 (for short, "the Act") and Rule 28(8) of the Andhra Pradesh General Sales Tax Rules, 1957 (for short, "the Rules") read with Clause (19) in Form D would make it clear that a surety, if given by a person on behalf of an assessee, that surety would remain in force against tax payable for a year as estimated by the assessee.

3. The learned Government Pleader does not dispute the factual matrix of the case, but he submits that earlier judgments were pronounced by this Court without regard to Rule 28(14) of the Rules, as it was not brought to the notice of the court. He submits that a surety remains in force so long the registration continues. Rule 28(14) of the Rules reads as under:

The security furnished shall be maintained in full so long as the registration certificate continues to be in force and may in the event of default of payment of any tax, penalty, interest or other amount due be adjusted towards such tax, penalty, interest or other amount after due intimation. The registering authority may in any case where such adjustment is made, demand fresh security or additional security to make up the amount adjusted towards the tax, penalty, interest or other amount.

4. If Rule 28(14) is read with Section 12(7) and other Rules to which a reference has been made in earlier judgments, it leaves no room to doubt that the surety would remain in force against the tax payable for a year. The language of Rule 28(14) of the Rules itself suggests such an interpretation. When it mentions that the security furnished shall be maintained in full so long as the registration certificate continues to be in force, it should be understood that the continuance of registration certificate remaining in force is subject to one year for which the surety has been given. For the period, i.e., one year for which a person gives a surety, the surety remains responsible for tax, penalty, interest, etc., till the registration certificate continues to remain in force.

5. With this view, we do not think that the earlier judgments of this Court need any re-consideration. Therefore, the writ petitions are allowed and the impugned notices are quashed. The petitioner submits that he is entitled to certain refunds. This is a matter to be taken into consideration by the respondents in accordance with Rules.

6. Rule nisi has been made absolute as above.

