

(1999) 09 AP CK 0129
In the Andhra Pradesh High Court
Case No : TRC No's. 27 to 32 of 1996

Penguin Textiles Ltd., Hyderabad

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 24-09-1999

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 22(6), 23, 33
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 5(1)
Income Tax Act, 1922 — Section 30, 46
Income Tax Act, 1961 — Section 220(6)

Citation : (1999) 6 ALD 517 : (1999) 6 ALT 72

Hon'ble Judges : S. Ananda Reddy, J;P. Venkatarama Reddi, J;B. Prakash Rao, J

Bench : Full Bench

Advocate : Mr. S. Krishna Murthy, for the Appellant;

Judgement

P. Venkatarama Reddi, J.—A Division Bench of this Court consisting of Y. Bhaskar Rao, J., (as he then was) and Nasir. J, having found an apparent conflict of views in two decisions -- Bharat Litho Press Vs. State of Andhra Pradesh, and CMP No.17575 of 1992 in TRC No.78 of 1992, referred the question at issue to a Full Bench. The question as formulated by their Lordships in the opening sentence i.e., "whether a Revision lies to the High Court u/s 22 of Andhra Pradesh General Sales Tax Act against the order of the Appellate Tribunal" seems to be an accidental slip. It does not reflect the correct issue. The correct issue as indicated by the learned Judges in the same reference order is "whether the High Court has got power to grant stay of collection of the tax decided by the original authority and confirmed by the appellate authority; or whether the High Court has no power except ordering for payment of instalments."

2. We would like to re-cast the question little differently -- "Whether the High Court is empowered to grant stay of collection of disputed tax and penalty pending disposal of revision petition (TRC) presented to it u/s 22 of the A.P. General Sales Tax Act (hereinafter referred to as the "Act") ?

3. The answer to the above question in turn depends on the interpretation of subsections (6) and (6-A) of Section 22 of APGST Act, and the relative scope and ambit of these two provisions. Subsection (1) of Section 22 provides for revision to the High Court against the order of the Appellate Tribunal on a question of law. Sub-section (6) provides that "notwithstanding that a petition has been preferred under sub-section (1), tax shall be paid in accordance with the assessment made in the case, provided that the High Court may in its discretion permit the petitioner to pay the tax in such number of instalments, or give such other direction in regard to the payment of tax as it thinks fit." The 2nd proviso to sub-section (6) though not very relevant may also be referred to have a complete picture. It reads:

"Provided further, that if, as a result of the petition, any change becomes necessary in such assessment, the High Court may authorise the assessing authority to amend the assessment, and on such amendment being made, the excess amount paid by the dealer shall be refunded to him without interest, or the further amount of tax due from him shall be collected in accordance with the provisions of this Act, as the case may be."

Then comes sub-section (6-A) which was introduced by APGST Amendment Act (Act 18 of 1985). The said sub-section lays down:

"The payment of tax and penalty, if any due in accordance with the order of the Appellate Tribunal in respect of which a petition has been preferred under sub-section (1) shall not be stayed pending the disposal of the petition, but if such amount is reduced as a result of such petition, the excess tax paid shall be refunded in accordance with the provisions of Section 33-B."

4. Before the introduction of subsection (6-A) in the year 1985, the issue whether under sub-section (6), the High Court had power to grant stay of collection of tax or whether the power vested in the High Court under sub-section (6) was much narrower in scope, did not crop up for consideration at any time before this Court. It was perhaps taken for granted that the power to grant stay inhered in the High Court under that provision. The controversy came to surface only after the advent of sub-section (6-A). The first of the cases in which sub-sections (6) and (6-A) were considered was *Bharath Litho Press Ltd.* (*supra*). The Division Bench observed:

"From a reading of the above subsections, it appears that pending a tax revision case, the tax has to be paid in accordance with the assessment made in the case. No stay shall be granted pending disposal of such revision except by the High Court, which "may in its discretion permit the petitioner to pay the tax in such number of instalments or give such other direction in regard to payment of tax as it thinks fit." In the face of express language of the proviso to sub-section (6), it is idle to contend that even the High Court is deprived of the power to stay the collection of the tax pending the revision. The proviso expressly confers a discretion upon the High Court either to fix the appropriate number of

instalments for payment of tax or give such other direction as it thinks fit with respect to payment of tax disputed in the revision. Again, having regard to the language of the proviso, it cannot be said that the only order that the High Court can make is to fix the instalments, as contended by the learned Government Pleader. That is one type of order that the High Court can make. But it can also make appropriate direction with respect to the payment of tax as it thinks fit. It may mean that it can direct a certain portion of the tax to be paid and stay collection of the balance pending the revision. It is true, the proviso does not contemplate an absolute stay. It contemplates that atleast some portion of tax should be paid. At the same time, it would be incorrect to contend that the direction to be made by the High Court should necessarily ensure the payment of the entire disputed tax pending, i.e., before the disposal of the revision. We see no warrant for placing such a limited construction upon the words "give such other direction in regard to payment of tax as it thinks fit" occurring in the proviso."

5. What exactly was the purpose of introduction of sub-section (6-A) and how these two provision have to be reconciled has not been specifically indicated by their Lordships. However, having noticed sub-section (6-A), the learned Judges made the following observations:

"We also take due note of the Legislative concern expressed in sub-section (6) and sub-section (6-A) -- indeed, of other provisions relating to stay of disputed tax pending appeals, referred to above --that ordinarily the collection of tax should not be stayed pending the revision. It is equally true that by the time the matter reaches this Court, more than one Tribunal under the Act has confirmed the exigibility of the tax disputed in the revision. But that is a matter which the High Court shall have to and will keep in view. It will also have regard to the facts of a case before it. Ordinarily, just because a tax revision case is admitted, an order of stay will not follow automatically. But, if the High Court feels that the facts of a particular case do warrant either the payment of tax in instalments or stay of collection of part of the tax in dispute, it may make such an order. The Court would not stay the collection of the entire disputed tax except in very grave cases where it feels that there has been a grave miscarriage of justice."

6. The question again came up for consideration nearly a decade later before another Division Bench in *BPL Ltd, v. Stale of A.P.* 24 APSTJ 46. While disposing of interlocutory applications for stay, the learned Judges approved the view taken in *Bharath Litho Press*, (supra) and ruled that despite sub-section (6-A), the High Court had power in appropriate cases to grant stay for recovery of tax. Referring to sub-section (6-A), the Division Bench observed that the "power of the High Court under first proviso to subsection (6) is neither taken away nor controlled by sub-section (6-A)". The reasons given are three-fold: (1) subsection (6-A) does not begin with a non-obstante clause to keep out the power under the proviso to sub-section (6); (2) Harmonious construction of the two provisions; (3) Legislative intent. However, we must take note of the fact that appropos

reasons 2 and 3, their Lordships only said this much:

"Thus it is clear that the power of the High Court under the first proviso to sub-section (6) extends to not merely to permitting the petitioner to pay the tax due in instalments, as fixed by the High Court, but also to granting such direction as it may deem fit. It follows that in appropriate cases, it has power to grant stay of recovery of tax due by the petitioner. It appears to us that the power of the High Court under the first proviso to sub-section (6), discussed above, is neither taken away nor controlled by sub-section (6-A) as it does not being with a non-obstante clause to keep out the power under the proviso. From a harmonious construction of both these provisions, sub-section (6) and (6-A), having regard to the Legislative intent, we conclude that where the stay of collection of tax is sought in a revision filed u/s 22(1) of the Act, the High Court in its discretion may permit the petitioner to pay the tax in such instalments as it may think just and proper; it may in its discretion give such other direction in regard to the payment of tax as it thinks fit including the direction not to collect tax pending disposal of the revision; but the High Court will exercise this power very sparingly in special circumstances to prevent grave miscarriage of justice."

7. We must also notice the order of another Division Bench in CMP No. 17575 of 1992 in TRC No.78 of 1992 dated 3-11-1992 which has been adverted to in the reference order. It is a short order passed by Majmudar, C.J., (as he then was) and Bhaskar Rao, J., (as he then was). The order reads as follows:

"We direct that there shall be no stay of recovery of the amount in demand. This direction is issued in the light of Section 22(6-A) of the APGST Act. However, the petitioner will be permitted to pay the amount in demand in three (3) equal monthly instalments."

Thus, a different note was struck in this order.

8. At this juncture, let us make it clear that the question of vires of subsection (6-A) is not before us. Obviously, such question cannot be raised before the High Court exercising its jurisdiction under the Act.

9. For the proper appreciation of the case, we must have an over-view of the Scheme of the Act relating to Appeals against the orders of the primary authority i.e., the assessing authority and the revisional authority and stay applications in relation thereto. First Appeal lies to the appellate Deputy Commissioner. The appellate authority is empowered to grant stay pending appeal subject to furnishing of security or payment of part of the disputed tax. If the appellate authority refuses stay, the assessee may prefer a Revision petition to the Joint Commissioner who may, subject to such terms and conditions as he may think fit, order stay of collection of tax under dispute pending disposal of appeal. The stay so granted by the Joint Commissioner will be operative till the disposal of further appeal by the Tribunal. Against the order of the appellate Deputy Commissioner, the aggrieved dealer can file Second Appeal to the appellate Tribunal. Another channel through which the appeals to the appellate Tribunal are

routed is in such of those cases where the Deputy Commissioner passes an order on revision u/s 20 or assessment u/s 14(4) read with (4-C). In such cases, the appeal which lies to the Tribunal is a First Appeal. The Tribunal is empowered to determine any appeal on the questions of law as well as on facts. However, pending appeal, the Tribunal has no power to grant stay. Such power which was being exercised hitherto by the Tribunal as incidental or ancillary power was taken away by Act 18 of 1985. By coincidence, the same Act added sub-section (6-A) to Section 21 also. It lays down an embargo against the Tribunal granting stay pending disposal of appeal. However, under sub-section (6), the Joint Commissioner is empowered to grant stay of collection of tax in dispute pending disposal of appeal by the Tribunal subject to such terms and conditions as he may think fit. This provision is some what akin to Section 220(6) of the Income Tax Act which vests discretion in the ITO to defer collection of tax pending the first Appeal. Against the order of the Sales Tax Appellate Tribunal, revision is provided to the High Court on a question of law. The High Court has power to dismiss the revision petition summarily. Grant of interim order pending revision is governed by subsection (6) and sub-section (6-A) of Section 22 which we have already noticed. It may be mentioned that appeal is provided by Section 23 to the High Court directly against an order passed by the Commissioner of Commercial Taxes in exercise of revisional jurisdiction. No bar is created against grant of stay by the High Court pending such appeal.

10. As a prelude to the discussion of the core question, we may recapitulate certain well-settled principles relevant to the remedy of appeal/revision and the passing of interim orders pending such appeal/revision. As long back as in the year 1968, the Supreme Court ruled in *Income Tax Officer Vs. M.K. Mohammed Kunhi*, , that even though no express provision exists, the appellate Tribunal must be held to have power to grant stay as an incident of its appellate jurisdiction. It was observed:

"It could well be said that when Section 254 confers appellate jurisdiction, it impliedly grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution and that the statutory power carries with it the duty in proper cases to make such orders for staying proceeding as will prevent the appeal if successful from being rendered nugatory."

11. Be it noted that the above proposition enunciated by the Supreme Court will hold good only when there is no express provision one way or the other. There is no room to apply the doctrine of incidental or implied powers when the Legislature makes a specific provision debarring the grant of stay or otherwise placing fetters on the appellate or revisional authority to grant stay. The power to decide the appeal or revision need not always be coupled with the power to pass interim orders to maintain status quo and the like. For instance, in the context of reference jurisdiction of the High Court under the Income Tax Act, it was held that the High Court does not have inherent or incidental power to grant stay or realisation of tax vide *Commissioner of Income Tax Vs. Banshi Dhar and Sons*, . In

Shyam Kishore and others Vs. Municipal Corporation of Delhi and another, , their Lordships after referring to Mohammed Kunhi's case (supra), made the following pertinent observations:

"Though the normal rule is that the incidental and ancillary powers of an appellate authority will include a power to grant stay of the order under appeal - vide, Income Tax Officer, Cannanore v. M.K. Mohammed Kunhi, AIR 1969 SC 430 -- that power cannot be read into Section 170(b) for such an interpretation would render Section 170(b) totally unworkable."

12. Apart from the provisions barring or regulating the power to grant stay, we come across provisions in many Central or State enactments which make appellate remedy depend on the deposit of tax at the very out-set or before hearing. However, certain statutes like the Central Excise Act enable the appellate authorities to dispense with the pre-deposit on considerations of undue hardship etc. In this context, the following pertinent observations made in The Anant Mills Co. Ltd. Vs. State of Gujarat and Others, , by Khanna, J., deserve notice:

"The right of appeal is the creature of a statute. Without a statutory provision creating such a right, the person aggrieved is not entitled to file an appeal. We fail to understand as to why the Legislature while granting the right of appeal cannot impose conditions for the exercise of such right. In the absence of any special reasons, there appears to be no legal or constitutional impediment to the imposition of such conditions. It is permissible, for example, to prescribe a condition in criminal cases that unless a convicted person is released on bail, he must surrender to custody before his appeal against the sentence of imprisonment would be entertained. Likewise it is permissible to enact a law that no appeal shall lie against an order relating to an assessment of tax unless the tax had been paid. Such a provision was on the statute book in Section 30 of the Indian Tax Act, 1922. The proviso to that Section provided that "..... no appeal shall lie against an order under sub-section (1) of Section 46 unless the tax had been paid." Such conditions merely regulate the exercise of the right of appeal so that the same is not abused by a recalcitrant party and there is no difficulty in the enforcement of the order appealed against in case the appeal is ultimately dismissed. It is open to the Legislature to impose an accompanying liability upon a party upon whom a legal right is conferred or to prescribe conditions for the exercise of the right. Any requirement for the discharge of that liability or the fulfillment of that condition in case the party concerned seeks to avail of the said right is a valid piece of Legislation and we can discern no contravention of Article 14 in it."

13. In Shyam Kishore 's case, (supra), the Supreme Court after referring to the judgment of Bharucha, J., in Elora Construction Company Vs. The Municipal Corporation of Gr. Bombay and Others, and the judgment of Chittatosh Mookerjee, J., in Chatter Singh Baid and Others Vs. Corporation of Calcutta and Others, , commented at paragraph 38 as under:

"The decisions of the Bombay and Calcutta High Courts earlier referred to (Ellora and Chatter Singh) have upheld the validity of a rigid provision banning the entertainment of an appeal altogether where the taxes are not paid. However, the Supreme Court in *Anant Mills, Vijay Prakash Mehta and Batra* had occasion to consider only the vires of a milder provision which permitted the appellate authority to waive or relax the condition of deposit. As explained in *Seth Nand Lal and Another Vs. State of Haryana and Others*, , these decisions settle the principle "that the right of appeal is a creature of statute and there is no reason why the Legislature while granting the right cannot impose conditions for the exercise of such right so long as the conditions are not so onerous as to amount to unreasonable restrictions rendering the right almost illusory". The Court in those cases had no reason to consider what the position would be if the conditions placed on the right of appeal were unduly onerous or such as to render the right of appeal totally illusory."

14. The Supreme Court considered it unnecessary to go into the question whether the right of appeal was made illusory on account of imposition of condition requiring pre-deposit of tax, in view of the interpretation placed on Section 170(b) of the Delhi Municipal Corporation Act. Their Lordships upheld the vires of Section 170(b) of the said Act by reading down the provision so as to create a bar against the final hearing and disposal on merits, but not to the entertainment of the appeal itself. While holding that the District Judge had no jurisdiction to waive the condition of deposit or stay the collection of tax pending disposal of appeal, the Supreme Court observed that DJ had the power to adjourn the hearing of the appeal or pass interim orders enabling the assessee to pay the tax before the appeal is actually heard and determined. Thus, even a provision which insisted on the pre-deposit of tax for hearing the appeal on merits by a judicial authority was upheld by the Supreme Court. In the instant case, though we are not concerned with the question of vires of the Section, we have referred to this decision only to emphasise that the power to stay the collection of tax need not always be a concomitant attribute of the appellate or revisional jurisdiction. In the instant case, there is no bar against the grant of stay pending disposal of appeal by the appellate Tribunal which is a judicial body. Moreover, there is no pre-condition for deposit of tax for entertaining or hearing the revision by the High Court. The ratio of the decision in *Shyam Kishore* 's case (supra), would therefore apply with greater force.

15. In the instant case, we are not concerned with a provision prescribing precondition for the entertainment of appeal or revision. We have only cited the above passage to repel the extreme argument raised by one of the learned Counsel that when once the right of appeal or revision is created, no fetters can be placed on the jurisdiction of the statutory authority or the Court while exercising such power.

16. Now, going deep into the crucial provisions viz., sub-sections (6) and (6-A) of Section 22, let us analyse what their relative scope is and discern the spirit and

reason behind them.

17. Sub-section (6) opens with a mandate that tax shall be paid in accordance with the assessment made in the case notwithstanding the filing of Revision. This is something akin to Order XLI, Rule 5(1) of CPC. The proviso however empowers the High Court to permit the petitioner to pay the tax in instalments. It also enables the High Court to "give such other direction" in regard to the payment of tax". Thus, having laid down the rule that "tax shall be paid notwithstanding the preferment of revision petition, the rigour of the Rule is softened by conferring discretion on the High Court to allow the petitioner to pay the tax in instalments. The power to give such other direction as it thinks fit" is also confided to the High Court. The question then is whether the phraseology "such other direction in regard to the payment of tax as it thinks fit" encompasses the power to grant stay of the disputed tax and penalty with or without conditions, it can be contended with much force that the expression "other direction" - though wide in its sweep should be given a restricted meaning in the light of the preceding clause enabling the High Court to grant "instalments" for payment of tax. In other words, the expression "other direction" which has no definitive meaning, takes colour from the preceding expression "instalments". It is aptly said that the meaning of a word shall be judged by the company it keeps. When the expression is capable of diverse meanings -- one wider and the other narrower, the question is which meaning has to be preferred. It is in this area, the principle of contextual interpretation and the rule of *Noscitur-a-sociis* is applied.

18. Going by the tenor of subsection (6) together with the proviso and the collocation of crucial words employed in the proviso, it can be contended with much force, as has been contended by the learned Government Pleader, that the directions to be issued by the High Court should not be such as to suspend the recovery of any part of the tax payable under the assessment made. The Court should stop short of issuing a stay order --either blanket or conditional. For instance, directions may be given for adjustment of the refund due for any other year towards the disputed tax, or directions may be given to furnish security while granting instalments or perhaps, the Court may direct in an appropriate case the deposit of disputed tax in a Bank or with the Court.

19. Another argument which can be said in favour of narrower construction of the words "other direction" is that if the Legislature had intended to preserve the power of stay to the High Court, it would have said so in more specific and clear language instead of conferring it in a roundabout way by employing an ambivalent expression.

20. As against these weighty considerations which go in favour of restricting the amplitude of the expression "give such other direction" so as to exclude the power to grant stay, there are equally weighty considerations on the other side. The time-tested interpretation that the High Court had power to grant stay under this residuary clause is one such factor. The State did not dispute at any time before subsection (6-A) was introduced in the year 1985 the power of the Court

to grant stay under sub-section (6). Secondly, we have the decision of the Division Bench in *Bharath Litho Press*, (supra), giving wider interpretation to the phrase "other direction" which was followed by another Division Bench nearly ten years later. We are however spared of the need to probe into this controversy bearing on the true meaning to be given to the expression "such other direction" occurring in the proviso to subsection (6) of Section 22 as it is our view that the entire complexion of the controversy has undergone a change with the insertion of the new sub-section i.e., (6-A). Subsection (6) cannot now be read and understood in isolation. Both the subsections should be read as an integrated whole. So viewed, the expression "such other direction" can no longer be given a wider connotation so as to comprehend a direction in the nature of stay. We shall elaborate it a little later.

21. Coming to sub-section (6-A), it opens up with an embargo against grant of stay of payment of tax and penalty due as per the order of the Tribunal pending disposal of revision petition. It further provides a safeguard to the assessee that in the event of assessee succeeding in the revision, the excess tax paid shall be refunded to him in accordance with Section 33-B. Section 33-F is integrally connected with Section 33-B. It lays down that where refund is due to the assessee in pursuance of the order referred to in Section 33-B and the assessing authority does not grant the refund within a period of six months from the date of such order, the assessee will be entitled to get simple interest at 12% per annum on the amount of refund due from the date following the expiry of the period of six months till the date on which the refund is granted. Thus, a provision for payment of interest atleast for a limited period has been provided, unlike the second proviso to sub-section (6) which denies interest to the assessee altogether.

22. The Scheme spelt out of these two provisions can be summarised as follows:
(1) There should be no stay of payment of disputed tax and penalty pending disposal of revision petition preferred u/s 22(1).

(2) However, the High Court can grant instalments for payment of tax which in the context should include penalty also. The High Court is also empowered to grant such other appropriate directions in regard to payment of tax so long as such directions do not have the effect of staying the recovery of tax during the pendency of revision.

(3) If on account of allowing revision petition, fully or partly, any refund of amount becomes due, it will bear interest at the rate of 12% per annum during the interregnum between the two dates specified in Section 33-F.

23. We may at the risk of repetition and that with the introduction of a specific provision prohibiting the grant of stay pending revision, there is no scope to invoke the theory of implied or ancillary powers vested in appellate or revisional authority.

24. From the above analysis, it is clear that both the provisions can exist in

tandem and both will have their independent roles to play. Neither of the provisions will become otiose or superfluous.

25. What then is the purpose and objective behind sub-section (6-A) ? In the Notes on clauses appended to the Bill, it is stated as follows:

"This clause seeks to insert new subsection (6-A) in Section 22 restricting the powers to grant of stay of collection of disputed tax or penalty in Tax Revision Cases by the High Court."

26. The Legislative policy is quite clear. The Legislature would have felt that the collection of tax should not be postponed for unduly long time, at any rate, after the assessment has been subjected to scrutiny by a judicial body like the Tribunal which is the final fact-finding authority and which can decide both questions of fact and law. As already noticed, such provisions placing restraints on the power to grant stay or prescribing pre-condition of deposit, are not unknown to fiscal Legislation in our country. By the time the matter comes up to the High Court, the disputed tax would have been stayed for a considerable time. The continuance of stay during the pendency of revision will further contribute to the delay in realisation of tax. Thus, in a situation where the interests of revenue are pitted against the off-hand chance of the assessee's success in the revision, the Legislature leaned in favour of a revenue-fetching exercise. The Legislature obviously felt that after the stage of disposal of appeal by the Tribunal is reached, they should remove the legal hurdles for realisation of tax. From the point of view of the assessee who might ultimately succeed in the revision, the possible prejudice is minimised by preserving the Court's power to grant instalments and also providing for payment of interest within the parameters of Section 33-F. May be, that provisions for payment of interest to the assessee is not adequate enough and may not ensure restitution to the full extent. But, that has a bearing on the reasonableness of the provision restricting the period for which the interest is payable. We are not called upon to examine that aspect. We have only referred to Section 33-F to highlight that the Legislature while restricting the power to grant stay has also made a provision for payment of interest -- may be in a truncated manner to minimise the loss caused to the assessee. If there is no adequate provision for payment of interest, logically, that should be a ground to plead that the entire tax should necessarily be stayed by the High Court as otherwise, there is no possibility of getting refund with full interest. But, the petitioners have refrained from advancing such extreme contention, realising the fallacy in such argument.

27. Let us now understand the provisions of sub-sections (6) and (6-A), especially the ambit and meaning to be assigned to the expression "give such other direction in regard to the payment of tax as it thinks fit" in the light of well known principles of interpretation. The contextual and harmonious reading, purposive interpretation, mischief sought to be remedied, the principle expressed in the maxim - "utres magtis valea quam peret" all these interpretative guides enter into our mental process in answering this crucial question. The phrase

"other direction" is a phrase of indefinite import. It is fairly and equally open to diverse meanings -- wide as well as narrow meaning. In such a situation, we must, by applying the principle of harmonious construction, see whether apart from preceding words, the allied subsection sheds any light. We should also remember that the interpretation if made in a particular manner should not make the cognate or allied provision of the Statute inoperative or otiose so as to defeat the very purpose of introducing that particular provisions. Above all, we should bear in mind the principle that "construction which would defeat the object of the Legislation must, if that is possible, be avoided" vide Commissioner of Income Tax, Delhi Vs. S. Teja Singh, .

28. We are of the view that no interpretative process impels us to give primacy to the proviso to sub-section (6) at the cost of relating (6-A) to back-seat. No principle of interpretation tells us to allow full play to the latter clause of the proviso to sub-section (6), by reading it in isolation and disregarding (6-A). The Court cannot make (6-A) a dead-letter and thereby frustrate the legislative purpose. With great deference to the observations made in BPL case, (supra), we fail to understand how the legislative purpose will be better served by allowing the proviso to sub-section (6) to overtake (6-A) although sub-section (6-A) was enacted with the definite purpose of curbing the Court's power to grant stay. After the introduction of (6-A), subsection (6) with its provisos cannot be allowed to remain at cross-purposes with (6-A). Harmonious construction and a holistic approach in tune with the Legislative object leads us to the irresistible conclusion that the proviso to sub-section (6) should be read subservient to (6-A). Even if the said proviso SANS (6-A) could be construed as an enabling provision to grant stay, when once sub-section (6-A) enters the Statute book, both provisions should be allowed to have full play within their respective parameters. So viewed, what is the functional role of these two provisions and what their implications are, have already been analysed supra. We reiterate the same. Merely because sub-section (6-A) does not start with non-obstante provision, the Court cannot nullify the operation of the rule categorically laid down in (6-A) grounded on considerations of public policy and denude it of its efficacy. The presence or absence of non-obstante clause in (6-A) is immaterial. The Legislature perhaps thought it unnecessary. We should read both provisions together in an anxiety to see that the Legislature intent is preserved and one of the provisions does not become otiose or ineffective. We cannot judge the power of the High Court on an "a priori" notion that the High Court as apex Court of the State should always retain its power to grant stay.

29. Whatever may be the justification for giving wider meaning to the words "such other direction" occurring in the proviso to sub-section (6) till sub-section (6-A) was introduced, with the enactment of subsection (6-A), there can no longer be such justification. The phrase "such other direction" as already noted, is capable of yielding diverse meanings. If we continue to include within its fold the power to order stay, it would be crossing swords with sub-section (6-A). If we then allow primacy to the proviso to sub-section (6) in preference to sub-

section (6-A), we will be making (6-A) a worthless provision. The legislative injunction in (6-A) would merely remain on paper. Naturally, we are reluctant to place such interpretation. An exhortation that this Court should exercise the power of stay cautiously and in extraordinary circumstances, is not a solace. We are not concerned with the mode of exercise of power. But we are concerned with the existence of power itself. At the risk of repetition, we would like to say that the meaning and connotation of a word does not always remain the same and it may change according to the context and sometimes with the march of time. In juxtaposition to sub-section (6-A), a narrower meaning has to be necessarily given to the expression "other direction" occurring in sub-section (6). With the introduction of (6-A), we can no longer read the proviso to sub-section (6), in isolation. Both should be allowed to work in their respective spheres to accomplish the Legislative purpose.

30. For all these reasons, we record our respectful dissent with the view taken in Bharat Litho Press case (supra) and BPL case (supra).

31. It was suggested some what faintly that the bar against the grant of stay under sub-section (6-A) is more in the nature of injunction directed to the assessing authority that he should go ahead with the recovery notwithstanding the pendency of revision and it ought not to be construed as a fetter imposed on the High Court to grant stay. It must be noted that the assessing authority or any superior authority is not invested with the power to stay the demand pending the revision. The words "shall not be stayed" are therefore not referable to the powers of the assessing authority. These words definitely qualify the High Court's powers pending revision. If the interpretation suggested by the learned Counsel for the assessee is accepted, (6-A) will be left without any purpose to serve. We again stress that it goes against the avowed objective with which (6-A) was introduced by way of amendment. The fact that the filing of revision shall not operate as a stay of demand of tax and penalty and the assessing authority is at liberty to recover the tax, is enjoined by sub-section (6) itself and there is no need to introduce sub-section (6-A) to reinforce the same idea.

32. The learned Counsel for the petitioners then submitted that the Department has power to withhold the refund u/s 33-F of the Act even after the appeal in the Tribunal goes against the Revenue and therefore, the assessee too should be provided with a remedy to seek stay. We do not think that the interpretation of the crucial provisions viz., (6) and (6-A) of Section 22 is controlled by Section 33-C which is a power given to the assessing authority to withhold the refund subject to specified conditions and in specified circumstances. It is not necessary that in a Taxing Statute, parity must be maintained in all respects between an assessee and the department. The powers confided to the tax authorities in larger public interest on the one hand and the rights and remedies available to the assessee on the other, need not be weighed in golden scales. Moreover, if there is any arbitrary order of withdrawal of refund, the assessee is not left without any remedy to question the same by filing a writ petition or otherwise.

So also, the contention of one of the learned Counsel that in an appeal u/s 23 directed against the order of the Commissioner, the High Court is invested with the power to grant stay whereas such a power is denied in a revision against the Tribunal's order cannot be accepted. First of all, such an argument has no bearing on the interpretation of the relevant provisions with which we are concerned. That apart, it must be noted that an appeal u/s 23 is a first appeal filed in the High Court directly against the revisional order of the Commissioner setting aside an order favourable to the assessee. It is for the first time that the tax dispute is subjected to judicial scrutiny. No appeal lies to the Tribunal against the order of the Commissioner. It is in those circumstances, there is no exclusion of the power to grant stay pending the appeal u/s 23.

33. One of the learned Counsel has drawn our attention to the observations in *Income Tax Officer Vs. M.K. Mohammed Kunhi*, , that a statutory power to hear the appeal carries with it the duty in proper cases to make such orders for staying proceedings as will prevent the appeal if successful "from being rendered nugatory". The learned Counsel submits that revision also stands on the same footing as appeal. Even so, we fail to understand how the Revision u/s 22 will become nugatory, if the assessee is compelled to pay the disputed tax after a long drawn litigation. In *Mohammed Kunhi's* case (*supra*), the Supreme Court was concerned with the question whether in the absence of a provision excluding the power to grant stay, the Tribunal as an appellate authority possessed the incidental or implied power to stay the collection of tax. In the instant case, there is an express provision. As already discussed, sub-section (6-A) places an embargo on the power to grant stay and the same is unaffected by the proviso to sub-section (6). The observations of the Supreme Court should be confined to the specific issue which their Lordships were dealing with. We may also mention that even within the framework of the existing provisions of Section 22, it is possible in exceptional cases to relieve the petitioner/assessee of undue hardship or injustice by granting instalments for payment in terms of the proviso to sub-section (6) and to take up the hearing of the revision case at an early date so that the case could be decided before the next instalment falls due. We have only indicated a possibility. It shall not be understood that we have laid down a rule of practice to be followed by this Court invariably.

34. Our attention has been drawn to the decision of the Karnataka High Court in *Swathi Traders v. C.T.O.* 76 STC 393. It was a case in which even at the stage of appeal to the Tribunal, the power to grant stay was taken away by the impugned amendment. The Karnataka High Court held that the said amendment had no application to the appeals filed before the date of amendment. There is no such situation obtaining here. As far as the obiter dicta herein that "the impugned amendment cannot take away the right vested in and conferred on the Appellate Tribunal by virtue of its very constitution as an appellate authority and therefore liable to be struck down" are too broadly made and run counter to the decision of the Supreme Court in *Shyam Kishore's* case (*supra*). In any case, the ratio of that decision has no application to the present case as the power to grant stay

pending appeal to the Tribunal is retained.

35. For the reasons aforesaid, we take the view that pending a revision u/s 22(1), of APGST Act, the High Court has no power to grant stay of recovery of tax or penalty. But, the High Court may in its discretion, permit the petitioner to pay the tax in specified instalments or give such other directions of limited nature as explained above, so long as such directions do not tantamount to granting stay. Our conclusion is that the embargo placed by subsection (6-A) of Section 22 on the grant of stay shall be given due effect and the "direction" contemplated by the proviso to sub-section (6) should be read subservient to sub-section (6-A) so as not to whittle down the operation of the embargo. In other words, the power of the High Court to grant "other directions" in terms of the proviso to sub-section (6) is not plenary in nature and cannot have the effect of making the embargo contained under subsection (6-A) otiose and ineffective. We are unable to subscribe to the view taken in the two Division Bench decision of this Court in Bharath Litho Press and BPL Ltd., (supra). We affirm the view taken by the Division Bench in CMP No.17575 of 1992 in TRC No.78 of 1992.

36. Accordingly, we answer the reference in favour of Revenue. The TRCs. together with the stay petitions filed therein shall be placed before the regular Tax Bench for determination according to law.