(2005) 02 AP CK 0007

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2488 of 2005

Ruchi Infrastructure Limited APPELLANT

Vs

Commercial Tax Officer, Kakinada Division and Others RESPONDENT

Date of Decision : 14-02-2005

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 17

Citation : (2007) 7 VST 194

Hon'ble Judges : T. CH. Surya Rao, J;M.H.S. Ansari, J

Bench : Division Bench

Advocate : S. Dwarakanath, for the Appellant;

Judgement

M.H.S. Ansari, J.—On the authority of the division Bench judgment in Anab-e-Shahi Wines and Distilleries Private Limited Vs. Appellate Deputy Commissioner, Secunderabad Division, Nampally, Hyderabad and Others,), instant writ petition is liable to be disposed of. In the said decision, it was held as under:

In so many similar cases, we have held that so long as the interim order is not passed on the stay application by the appellate authority, such coercive methods to recover the amount of tax under the assessment order, which is the subject-matter of the appeal, are not proper. In spite of this, such proceedings are being initiated. Under the circumstances, we have no alternative but to quash the garnishee proceedings issued against the third and the fourth respondents and to restrain the second respondent from initiating any recovery proceeding against the petitioner pending disposal of its stay application before the appellate authority, i.e., the first respondent. Accordingly, this writ petition is hereby finally disposed of.

2. That was a case where during the pendency of the appeal and the stay application, the assessing authority started recovery proceedings by initiating garnishee proceedings. Being aggrieved by the said action, the petitioner in that case preferred the said writ petition.

3. Our attention has also been drawn to the circular in CCT''s Ref. L III(1)/1362/94, dated March 4,1996, wherein clarificatory instructions have been issued, inter alia, to the following effect:

In clarification of instructions issued in the circular cited all the assessing authorities and Deputy Commissioners (CT) are informed that as per the honourable High Court''s order in W.P. No. 3337 of 1996, the High Court''s order in Anab-E-Shahi case [1995] 98 STC 386 : [1995] 21 APSTJ 98 referred to in the circular cited will apply when the stay sought for relates to the first appeal pending before the appellate authorities....

4. In the light of the above, instant writ petition is liable to be disposed of for the reason that against the order of assessment, the petitioner preferred appeal before the Appellate Deputy Commissioner (CT)-second respondent herein and also filed an application for stay of collection of disputed tax on February 8, 2005. It is averred in the writ petition that the said appeal and stay application are pending before the second respondent.

5. Accordingly, the writ petition is disposed of restraining the first respondent from initiating any recovery proceedings against the petitioner, pending disposal of its stay application before the appellate authority and consequently the impugned notice issued u/s 17 of the Andhra Pradesh General Sales Tax Act, 1957 dated February 11, 2005 is liable to be, and is, set aside. As no counter-affidavit has been relied upon, the averments in the writ application are deemed as not admitted.

