

(2013) 07 AP CK 0043
In the Andhra Pradesh High Court
Case No : TRC No. 106 of 2012

Sharp Business Systems (P) Ltd.

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 18-07-2013

Acts Referred:

Citation : (2013) 57 APSTJ 96

Hon'ble Judges : Kalyan Jyoti Sengupta, C.J;G. Rohini, J

Bench : Division Bench

Advocate : T. Ramesh Babu, for the Appellant;

Judgement

Kalyan Jyoti Sengupta, C.J.—This revision petition is directed to impugn the judgment and order of the Sales Tax Appellate Tribunal, Hyderabad, dated 17.2.2012. We have heard the learned counsel for the appellant and gone through the impugned judgment and order of the learned Tribunal.

2. The Tribunal dismissed the appeal preferred by the petitioner. The point involved in this case is whether the product LCD Projectors manufactured by the petitioner is an electronic item or cinematographic goods. The learned Tribunal recorded the fact that on 8.10.2003, an assessment order was passed by the Commercial Tax Officer and it was held that the goods as manufactured by the petitioner for the assessment year 2002-03 are Projectors and levied tax at 8%. Against this order, no appeal was filed either before the Appellate Deputy Commissioner (CT) or higher judicial forums contending that the goods dealt in by the petitioner are electronic goods and they fall under item 13.17 and to this extent, objections were filed before the revisional authority to the show cause notice issued stating that the LCD Projectors dealt with by the petitioner are computer peripherals. The issue was raised for the first time contending to treat the goods dealt in by the petitioner fall under "electronics". Thereafter, the learned Tribunal has recorded that on the facts of the case on record, the petitioner sought the relief after seven years after the order was passed by the Commercial Tax Officer, who levied tax on Projectors at 8%, on which, no appeal

was filed and now on the pretext that the revisional authority treated Projectors to fall under Entry 4 to the First Schedule/under entry 38 of the same schedule exigible to tax at 12% and claiming to treat it as electronics.

3. It has been recorded by the Tribunal that the Sales Tax Appellate Tribunal has already rendered a decision on the said product that LCD Projectors fall under entry 4 of First Schedule with effect from 1.1.2000 exigible to tax at 12% and treated the same as cinematographic goods in the case of View Tech Imaging Systems, Secunderabad v. State of Andhra Pradesh reported in (2008) 47 APSTJ 163.

4. Thus, the Tribunal on fact found that the goods manufactured by the petitioner are not electronic items and the said goods fall under entry 4 of the First Schedule. Since the Tribunal has relied on its earlier decision on the same issue, we cannot say that there is any illegality or infirmity and on facts, the petitioner has accepted the fact that the LCD projectors are not electronic items. Subsequently, the petitioner is estopped from treating the said item as different item.

5. It is true that in tax matters, the principle of res judicata does not apply. Hence, each and every individual assessment year is a separate year and decision is rendered separately. The principle is applicable in the case of law, but on factual aspects, the principle of estoppel will certainly apply.

6. Learned counsel however, submits that the Division Bench judgment of the Tribunal in the case of View Tech Imaging Systems, Secunderabad has been upset by necessary implication of a Full Bench decision of the Tribunal in the case of M/s. Aditya Music India Ltd., Hyderabad v. State of Andhra Pradesh rendered in T.A. No. 768 of 2003, dated 22.1.2009.

7. We have gone through the judgment of the Full Bench of the Tribunal and this judgment has nowhere dealt with the case of View Tech Imaging Systems, Secunderabad. The Full Bench of the Tribunal has dealt with the issue of implication of a subsequent notification. In that context, it was held by the Tribunal that subsequent insertion of entries in any schedules would not have any effect of repealing or rescinding the GOs earlier passed by the Government unless the said GO is specifically withdrawn or rescinded. In this decision, it has not been said that the L.C.D. Projector is an electronic item or for that matter, it does not fall under entry 4 of the First Schedule with effect from 1.1.2000. The learned counsel has cited the decision of the Supreme Court in the case of State of Andhra Pradesh, etc. Vs. M/s. Hyderabad Asbestos Cement Production Limited etc. etc., on the question of the power of the appellate authorities.

8. It is settled position of law that the appellate authority's power is coextensive with the original authority and this principle has been explained by the Supreme Court in the case of Hyderabad Asbestos Cement Products Ltd., in the manner as follows:

That the power of the appellate authority is coextensive with that of the first assessing authority and, therefore, what can be done by the first assessing authority can equally be done by the appellate authority, whether first or the second appellate authority.

9. The aforesaid judgment of the Supreme Court is not the authority to rule that LCD Projector is an electronic item.

10. Learned counsel also relied upon another decision of the Supreme Court in the case of J.K. Synthetics Ltd. and Another Vs. Commercial Tax Officer and Another,

11. We fail to understand how this judgment is applicable to this case and when on facts, it is established and accepted by the assessee that L.C.D. Projector is not an electronic item. This judgment has not laid down any principle of law, which can be followed by this Court. Therefore, this judgment is distinguishable in the narration of facts of the case.

12. In exercise of revisional power, we do not find any error of jurisdiction nor any illegality or infirmity in the impugned order. Hence, this revision case is dismissed.