

(2001) 11 AP CK 0105

In the Andhra Pradesh High Court

Case No : Writ Petition No. 19942 of 2001

Simplex Concrete Piles (India) Ltd.

APPELLANT

Vs

Commercial Tax Officer and Another

RESPONDENT

Date of Decision : 26-11-2001

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 5B, 5F, 5G, 9, 9(1)

Citation : (2006) 143 STC 81

Hon'ble Judges : Motilal B. Naik, J;G. Rohini, J

Bench : Division Bench

Advocate : P. Srinivasa Reddy, for the Appellant; Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Motilal B. Naik, J.—The petitioner seeks a writ of mandamus or any other appropriate writ or direction declaring G.O. Ms. No. 739 dated October 17, 2000 as illegal and ultra vires the powers of the second respondent in so far as it supersedes G.O. Ms. No. 187 dated April 3, 2000 with retrospective effect and strike down G.O. Ms. No. 739 dated October 17, 2000 to the extent of such retrospectivity and consequently declare that the petitioner is entitled to claim reduction of tax paid on purchase of cement in excess of 4 per cent from the tax payable by it on execution of works contract as provided under G.O. Ms. No. 187 dated April 3, 2000 for the period from April 3, 2000 to October 31, 2000.

2. The petitioner is a registered dealer on the rolls of the first respondent under the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter referred to as "the Act") and the Central Sales Tax Act, 1956. The petitioner is engaged in the business of executing works contracts, civil as well as steel structurals. For the assessment year 2000-2001 the petitioner executed certain civil works for NTPC at Parwada, Visakhapatnam District and other sites in Andhra Pradesh. For the purpose of executing the works the petitioner purchases cement incurring sales tax at 16 per cent. u/s 5-B of the Act manufacturers and processors of goods can

register themselves for purchasing goods against form-G incurring tax at 4 per cent only. However, by G.O. Ms. No. 58 dated January 31, 2000 the Government notified cement as one of the ineligible goods. As the petitioner is a works contractor constructing civil/steels structurals, it did not take registration u/s 5-B of the Act.

3. While so, the Government of Andhra Pradesh issued G.O. Ms. No. 187 dated April 3, 2000 whereunder the Government issued directions, which are to the following effect :

In exercise of the powers conferred by Sub-section (1) of Section 9 of the Andhra Pradesh General Sales Tax Act, 1957 (Act VI of 1957), the Governor of Andhra Pradesh hereby directs that where on the sale or purchase, inside the State, of cement tax has been levied and collected under the said Act and such cement is used in the manufacture of goods or in the execution of works contract in the State taxable u/s 5-F or 5-G, the amount of tax paid in excess of 4 paise in the rupee on such quantity of cement shall be reduced from the tax leviable in respect of sales of such goods or tax leviable on execution of such works contract.

4. The petitioner claimed the set-off of tax paid on cement at the time of purchase in excess of 4 per cent from the tax payable by it in respect of the works contract executed by it in a sum of Rs. 26,77,673 at the time of final assessment. According to the petitioner, the Government issued G.O. No. 739 dated October 17, 2000 (published in the Gazette on November 1, 2000) superseding G.O. Ms. No. 187 along with G.O. Ms. No. 58 in the process of modifying the scheme of purchasing of goods against form-G u/s 5-B. Though the said G.O., which is made effective from January 1, 2000 the Government removed cement from the list of ineligible goods and enabled the purchase of cement by manufacturers and processors of goods against from-G incurring sales tax at 4 per cent only. According to the petitioner in view of G.O. Ms. No. 739 dated October 17, 2000 retrospectively suspending G.O. Ms. No. 187 the petitioner's claim for set-off has been nullified. The first respondent finalised the petitioner's assessment on July 31, 2001 for the assessment year 2000-2001. It is this G.O., which is assailed by the petitioner before this Court in this writ petition.

5. Heard the counsel for the petitioner as well as the Special Government Pleader for the respondents.

6. The counsel for the petitioner contended that by subordinate legislation the Executive cannot supersede or withdraw the benefits, which are available to the concerned retrospectively, but that withdrawal only shall be prospectively. In other words, according to the counsel for the petitioner, the benefits, which were available to the petitioner pursuant to G.O. Ms. No. 187 dated April 3, 2000 were withdrawn retrospectively pursuant to the issuance of impugned G.O. Ms. No. 739 dated October 17, 2000 which has been Gazetted on November 1, 2000. He further submitted that though during the interregnum period, i.e., from April 3,

2000 to October 31, 2000 the petitioner is entitled for the benefits as available to it under G.O. Ms. No. 187, dated April 3, 2000 but as a result of the G.O. withdrawing the benefits retrospectively, the petitioner losing the benefits and therefore, the petitioner questioned the validity of the G.O. contending that exercise of such powers by the executive is ultra vires to the powers available to the Government.

7. The question as to whether the executive while enacting subordinate legislation can withdraw the benefits retrospectively fell for consideration before us in W.P. No. 30752 of 1997 and batch and by order dated November 20, 2001 (Ganduri Eswaraiah v. Deputy Commercial Tax Officer [2002] 125 STC 406) in the above writ petitions we held that the executive lacks the said power of withdrawing the benefits retrospectively. However, we also held that the benefits could be withdrawn prospectively. Following the said view, we hold that withdrawal of benefits available to the petitioner pursuant to G.O. Ms. No. 187 dated April 3, 2000 for the period from April 3, 2000 to October 31, 2000 consequent upon G.O. Ms. No. 739 dated October 17, 2000 is without competence and declare that such powers are not available to the executive.

8. Consequently, we allow the writ petition declaring G.O. Ms. No. 739 dated October 17, 2000 as ultra vires to the extent of withdrawing the benefits, which are available under G.O. Ms. No. 187 dated April 3, 2000 retrospectively. No costs.

9. It is stated by the counsel for the petitioner that since the assessing authority has denied the benefits in the light of the subsequent G.O. issued, which are available to the petitioner pursuant to G.O. Ms. No. 187 and completed the assessment for the year 2000-2001, the assessing authority may be directed to reassess and grant the benefits for the interregnum period, i.e., from April 3, 2000 to October 31, 2000.

10. Accepting the above submission, we direct the assessing authority to reassess and determine the tax liability for the assessment year 2000-2001 while giving benefit to the petitioner for the interregnum period from April 3, 2000 to October 31, 2000 in terms of G.O. Ms. No. 187 dated April 3, 2000.

11. That Rule nisi has been made absolute as above.