(2005) 08 AP CK 0103

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5942 of 2005

Sri Balaji Food — APPELLANT

Vs

State Level Committee and Others — RESPONDENT

Date of Decision : 18-08-2005

Acts Referred:

Citation : (2007) 6 VST 707

Hon'ble Judges : Ramesh Ranganathan, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : P. Srinivasa Reddy, for the Appellant; Govt. Pleader for Commercial Tax for Respondent No. 1, Raji Reddy, Special Govt. Pleader for Taxes for Respondent Nos. 2 and 4 and Govt. Pleader for Industries, for the Respondent

Judgement

B. Sudershan Reddy, J.—The petitioner prays for issuance of a writ of mandamus declaring the action of the first respondent in cancelling the final eligibility certificate dated October 30, 1998 by the cancellation order dated December 21, 2004 as illegal, without authority in law and contrary to the principles of natural justice. The petitioner accordingly prays for issuance of consequential directions restraining the respondents from proceeding to recover the impugned demand which forms part of the incentive availed by it during the subsistence of the final eligibility certificate for the period from December 6, 1996 to December 5, 2004.

2. The petitioner was carrying on business in manufacture and sale of bakery products and is a registered dealer under the provisions of the Andhra Pradesh General Sales Tax Act, 1957 (for short, "the Act"). The Government of Andhra Pradesh vide G.O. Ms. No. 108, Industries and Commerce (IP) Department, dated May 20, 1996 announced its new industrial policy and accordingly offered various incentives to the new industries which include sales tax exemption/ deferment. There is no dispute whatsoever that the petitioner is one of the eligible industries entitled for the incentives.

3. Pursuant to the application dated March 19, 1998 made by the petitioner, the first respondent - State Level Committee vide proceedings dated October 30,

1998 granted final eligibility certificate. The petitioner was accordingly granted sales tax exemption to a tune of Rs. 19,32,420 to be availed for a period of seven years from December 6,1997 to December 5, 2004. The petitioner claims to have availed the benefit only to an extent of Rs. 11,00,783.

4. The gravamen of the complaint in the instant writ petition is that, all of a sudden, the Commercial Tax Officer, Kakinada addressed a letter to the Industries Department alleging that the petitioner was selling the products manufactured in a hotel which is an ineligible industry under G.O. Ms. No. 108 dated May 20,1996 and hence not entitled for grant of any incentives. Based on the said communication, the first respondent is stated to have made a detailed enquiry. While the matter stood thus, the first respondent issued show cause notice dated June 14, 2004 calling for objections from the petitioner as to why the final eligibility certificate granted in its favour should not be cancelled. The petitioner is stated to have filed a detailed representation, inter alia, contending that the premises in which the petitioner is manufacturing the bakery products is distinct and in the said premises, the petitioner is not running any hotel or restaurant as alleged.

5. That after receiving the reply to the show cause notice, no further enquiry as such was held and all of a sudden, the petitioner was served with a communication from the fourth respondent dated February 4, 2005 demanding payment of sales tax incentive availed by it on the ground that the final eligibility certificate granted to it was cancelled by the first respondent on December 21, 2004.

6. In this writ petition, Sri Bhasker Reddy, learned Counsel for the petitioner, submits that the petitioner filed a detailed representation to the show cause notice issued by the first respondent and thereafter, no enquiry as such was held by the first respondent and not even a copy of the order dated December 21, 2004 purported to have been passed by the first respondent was communicated. The proceedings dated December 21, 2004, which remains on the file of the first respondent, cannot be given effect to unless the same is communicated to the petitioner. Respondent Nos. 2 to 4 cannot give any effect to such proceedings which is not served on the petitioner. That at the most, it remains to be an internal communication between the first respondent and respondent Nos. 2 to 4.

7. In the counter-affidavit filed by the Industries Department, it is not stated as to whether the said order was communicated to the petitioner in spite of a specific averment in the affidavit filed by the petitioner to the effect that the proceedings of the first respondent are not communicated. In order to set the controversy at rest, we have required the learned Government Pleader for Industries to make available the records. The records are made available for our perusal and we have perused the same. The impugned letter No. 20/1/03/685 dated December 21, 2004 is no doubt addressed to the petitioner which reads as follows:

In view of the decision of the State Level Committee, the final eligibility certificate issued to M/s. Balaji Foods, Kakinada, for availing sales tax exemption to a tune of Rs. 19,33,420, under Target 2000 scheme for a period of seven years from June 12, 1997 to June 11, 2004 for the line of activity bakery products (bread, cakes, puffs) vide reference second cited is hereby cancelled.

8. The order appears to have been authenticated by the Additional Director of Industries (N) FAC. The office copy of the impugned order no doubt shows as if the same was dispatched on December 23, 2004. On the top of the office order, it is mentioned as "RP" which means that it was sent under the registered post acknowledgement due. There is no acknowledgement as such available in the file. Learned Government Pleader for Industries, however, stated that it was sent under ordinary post. In the absence of any specific plea in the counter-affidavit and more particularly, in view of the fact that the office copy discloses as if it was sent under registered post acknowledgement due, we find it difficult to accept the submission made by the learned Government Pleader for Industries. In the circumstances, learned Counsel for the petitioner is right in contending that the impugned communication, at best, remains to be a part of internal correspondence between the first respondent and respondent Nos. 2 to 4. Such uncommunicated orders cannot be given effect to by respondent Nos. 2 to 4 and more particularly for withdrawing the incentives already granted to the petitioner. The impugned proceedings undoubtedly result in serious civil consequences so far as the petitioner is concerned. The rights of the petitioner under the final eligibility certificate granted on October 30, 1998 cannot be permitted to be taken away under a decision, which remained uncommunicated to the petitioner.

9. For the aforesaid reasons, this writ petition is disposed of directing respondent Nos. 2 to 4 not to give effect to the impugned proceedings dated December 21, 2004 of the first respondent until the same is communicated to the petitioner in accordance with law. It shall be open to the first respondent to communicate the said proceedings by duly serving the same upon the petitioner and upon such service, the petitioner shall be entitled to avail such remedies as may be available to it in law, if it intends to question the same. The further proceedings by respondent Nos. 2 to 4 may depend upon the service of the impugned proceedings dated December 21, 2004 upon the petitioner.