
(2006) 10 AP CK 0101

In the Andhra Pradesh High Court

Case No : Writ Petition No. 20461 of 2006

Sri Lakshmi Enterprises

APPELLANT

Vs

Commercial Tax Officer

RESPONDENT

Date of Decision : 09-10-2006

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 15

Citation : (2008) 12 VST 86

Hon'ble Judges : J. Chelameswar, J;Appa Rao, J

Bench : Division Bench

Advocate : Shaik Jeelani Basha, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

J. Chelameswar, J.—The writ petition is filed with a prayer as follows:

...to issue writ of mandamus or any other appropriate writ or order provisionally for the period from April, 2004 to June, 2004 by proceedings dated September 7, 2006 in G. I. No. 23159/04-05 as arbitrary, contrary to law and without even considering the objections of the petitioner dated November 8, 2004 and further restricting the time for payment of tax to three days, without assigning any good and sufficient reasons and consequently setting aside the proceedings of the respondent dated September 7, 2006 as null and void and pass....

2. The petitioner is a partnership firm carrying on the business in the sales and distribution of soft drinks. On September 3, 2004, the respondent herein issued notice to the petitioner proposing to provisionally assess the tax liability under the Andhra Pradesh General Sales Tax Act, 1957 (for brevity, "the Act") for the period between April 1, 2004 to June 30, 2004. The notice indicates that the respondent proposed to assess the turnover of the petitioner at Rs. 81,90,200 and also indicated that the petitioner would be liable to pay Rs. 2,17,415.

3. The petitioner replied on November 8, 2004.

4. The respondent after receipt of the said reply, kept quiet for almost two years and passed provisional assessment order dated September 7, 2006. Apart from anything else, the assessment orders state that the petitioner did not file any objection to the show cause notice dated September 3, 2004.

5. The petitioner asserted in the affidavit that, in fact, objection is filed on November 8, 2004. When the matter came up earlier on September 28, 2006, the learned Government Pleader sought time to obtain instructions in this regard.

6. The allegation of the petitioner that he has already filed objections on November 8, 2004 is not denied. Apart from that, the power to make provisional assessment is contained in Section 15 of the Act, which reads as follows:

15. Provisional assessment of tax.--(1) The tax payable under this Act for each year may be provisionally assessed in advance during the year in monthly or other prescribed instalments on the basis of estimated or actual turnover of the dealer; and for that purpose a dealer may be required to submit a return or periodical return of estimated or actual turnover and pay the tax on the basis of such return or periodical returns, in such manner as may be prescribed;

(2) ?.

From the language of the said section, it is clear that such power is given by the Legislature to assess the tax in advance during the year but not for making provisional assessment two years after completion of the year. In our opinion the present impugned order is not only beyond the authority of the law vested with the author of the order, but sheer abuse of power vested with its author.

7. Consequently, the impugned order is set aside and the writ petition is allowed. No order as to costs.