(2014) 03 AP CK 0188

In the Andhra Pradesh High Court

Case No : TRC No. 164 of 2001

State of Andhra Pradesh APPELLANT

Vs

Krishna Oberoi RESPONDENT

Date of Decision : 19-03-2014

Acts Referred:

Citation : (2014) 58 APSTJ 233

Hon'ble Judges : M. Satyanarayana Murthy, J;Ashutosh Mohunta, J

Bench : Division Bench

Advocate : P. Balaji Varma, Special Standing Counsel, Advocate for the Appellant

Judgement

M. Satyanarayana Murthy, J.—This revision is filed against the impugned order in T.A. No. 717 of 1995 passed by the State Sales Tax Appellate Tribunal, Andhra Pradesh, Hyderabad, whereunder the Tribunal held that the water supplied by the Municipal Corporation used in the cooling plant cannot be included in the turnover to assess. M/s. Krishna Oberoi-assessee carried on hotel business both boarding and lodging assessed for the year 1989-90 on the gross total turnover of Rs. 8,12,81,074.66 Ps. and net turnover of Rs. 3,40,04,876.50 ps. But the revisional authority-Deputy Commissioner, Punjagutta Division, opined that certain items consumables relating to purchase were not found in the turnover and they are liable to be included in the turnover and exigible to tax. Thereupon, a show cause notice was issued by the revisional authority-Deputy Commissioner, Punjagutta Division, to levy tax on the turnover of Rs. 57,67,780/- and passed an order dated 23.09.1995 and the same was challenged before the Sales Tax Appellate Tribunal, Hyderabad, wherein the Tribunal held that the water supplied by the Municipal Corporation cannot be included in the turnover. The total value of water purchased was Rs. 12,39,690/- which is consumable u/s 6A of AP GST Act for the assessment year 1987-88. However, the said contention is turned down by this Court in A.P. Paper Mills v. State of A.P. (6 APSTJ 82) which was confirmed again in T.R.C. No. 327 of 1985 and so also in 13 APSTJ 138 (M/s. Hindustan Zinc Limited, Visakhapatnam v. The

State of A.P.). In Hindustan Zinc Limited case, it is exempted from the turnover holding that it is not exigible to tax.

2. The impugned order passed by the Sales Tax Appellate Tribunal is challenged by the state without raising any question of law to be decided but contended that in view of clause HA of Section 6A of AP GST Act, the water though not a raw material in the business, it is consumable, however the same shall not be exempted from turnover and prayed to set aside the order.

3. No doubt, the order under challenge passed by the Sales Tax Appellate Tribunal is based on Hindustan Zinc Limited Case, where the High Court held that the goods consumed in the manufacturing of the goods for sale or consume them otherwise dispose of in any other manner other than by way of sale in the state is exigible u/s 6A of AP GST Act. But in the instant case on hand, the disputed turnover cost of purchased water is not included the value of the water consumed in the manufacturing of another item to bring water within in the ambit of Section 6A of APGST Act. Undoubtedly, the assessee - M/s. Krishna Oberoi GVK Hotels Limited, is a dealer but the water being used is not in the manufacturing process of any goods. However, the water supplied by municipal corporation is being used only for cooling its equipment for purpose of manufacturing of goods, thereby the assessing authority subjected such purchase of tax u/s 6A of AP GST Act, 1957 is not in accordance with law for the reason that the water supplied by the Municipal Corporation is not being used in the manufacturing process and sale of water is not the primary business of the assessee, but the water purchased by the assessee is only for cooling equipment in the hotel, but not in the manufacturing of goods. Therefore, the assessee is not a dealer within the definition u/s 2-E of AP GST Act. Since, cooling of equipment is not manufacturing goods. Therefore, the Sales Tax Appellate Tribunal, Hyderabad, rightly set aside the order passed by the Deputy Commissioner, revisional authority.

4. On reappraisal of entire material available on record by exercising powers of revision by this Court, we find no perversity in the impugned order passed by the Sales Tax Appellate Tribunal warranting interference of this Court and that to revisional powers of this Court are limited and we find no error on the face of the record. Hence, we have no option except to confirm the order passed by the Sales Tax Appellate Tribunal, as such we are totally in agreement with the finding of the STAT and the order passed by the STAT is upheld accordingly and the tax revision case is liable to be dismissed. In the result, the tax revision case is dismissed. No costs. In consequence, Miscellaneous Petitions, if any pending in this petition shall stand closed.