**(2000) 03 AP CK 0074**

**In the Andhra Pradesh High Court**

**Case No :** Tax Revision Case No. 204 of 1999

State of Andhra Pradesh APPELLANT

Vs

North Coastal Wines Distributors RESPONDENT

**Date of Decision :** 08-03-2000

**Acts Referred:**

Andhra Pradesh General Sales Tax Act, 1957 — Section 21(6A)

**Citation :** (2000) 119 STC 80

**Hon'ble Judges :** P. Venkatarama Reddi, J;D.S.R. Varma, J

**Bench :** Division Bench

**Advocate :** Special Govt. Pleader for Taxes, for the Appellant;

**Final Decision :** Dismissed

# Judgement

P. Venkatarama Reddi, J.—We see no illegality in the impugned order of the Tribunal granting conditional stay pending appeal before it against the order of the Joint Commissioner of Commercial Taxes (Legal) passed in exercise of suo motu revisional power u/s 20(2) of the A.P. General Sales Tax Act (for short "the Act"). The Joint Commissioner revised the order of the Appellate Deputy Commissioner setting aside the assessment and remanding the matter for fresh disposal by the assessing authority in the light of the observations made therein. The Joint Commissioner revised the order having come to the conclusion that the remand was unwarranted.

2. The learned Government Pleader relies on Sub-section (6-A) of Section 21 of the Act and submits that by virtue of the embargo laid down therein, the stay cannot be granted by the Tribunal. The Tribunal overruled the same objection and in our view, rightly. Sub-section (6-A) of Section 21 reads as follows :

"The payment of tax and penalty, if any, due in accordance with the order of the first appellate authority or of the Deputy Commissioner suo motu under Sub-section (4-C) of Section 14 or in revision u/s 20, in respect of which an appeal has been preferred under Sub-section (1), shall not be stayed pending disposal of the appeal."

3. In the instant case, no tax is payable as per the order of the first appellate authority inasmuch as the assessment has been set aside and the case was remanded. It is also not a case wherein tax is payable by virtue of the revisional order passed by the Deputy Commissioner because in the present case, it is the Joint Commissioner who exercised the power of revision. Therefore, Sub-section (6-A) does not create a bar against grant of stay. When there is no bar, the Tribunal has undoubted power to grant stay as the power to grant stay has been considered to be incidental or ancillary to the power to dispose of the appeal vide the decision of the Supreme Court in Income Tax Officer Vs. M.K. Mohammed Kunhi, . The omission to mention Joint Commissioner in Sub-section (6-A) is significant. It may be for the reason that the assessee should not be left without the remedy to obtain interim relief pending disposal of appeal by the Tribunal against an order passed by the Joint Commissioner. If the Appellate Deputy Commissioner or the Deputy Commissioner or the Commissioner had passed an order in exercise of their respective powers, the assessee would be in a position to seek stay pending such appeal either from the Joint Commissioner or from the High Court. But, in a case in which the Joint Commissioner exercises the power of revision u/s 20(2), if there is a bar against grant of stay by the Tribunal, the assessee will be disabled to obtain interim relief from any forum. This reinforces our conclusion that the bar would not apply to a case of appeal preferred against an order of the Joint Commissioner u/s 20(2) of the Act. We, therefore, see no reason to admit this tax revision case. It is accordingly dismissed.

 