(2014) 04 AP CK 0019

In the Andhra Pradesh High Court

Case No : TRC No. 156 of 2013

State of Andhra Pradesh APPELLANT

Vs

Pearl City Containers RESPONDENT

Date of Decision : 02-04-2014

Acts Referred:
Andhra Pradesh Value Added Tax Act, 2005 — Section 31

Citation : (2014) 58 APSTJ 299

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

Bench : Division Bench

Advocate : Dantu Srinivas, Special Standing Counsel, Advocate for the Appellant; M.V.J.K. Kumar, Advocate for the Respondent

Judgement

M. Satyanarayana Murthy, J.—This revision is directed against the impugned order in T.A. No. 58 of 2011 passed by the State Sales Tax and VAT Appellate Tribunal, Hyderabad, wherein the order passed by the Appellate Deputy Commissioner (CT), Hyderabad Rural Division dated 18.03.2009 was set aside. The revision petitioner was the assessee-VAT dealer, Commercial Tax Officer, Jeedimetla Circle, assessed tax for the year 2005-06. Aggrieved by the order, an appeal was preferred before the Appellate Deputy Commissioner (CT), Hyderabad Rural Division, without depositing 12.5% of the disputed tax of Rs. 18,070/- as required under the provisions of AP VAT Act 2005 and a check memo was issued by the ADC to the appellant and in response to the check memo, the appellant requested time for 15 days. Even after availing sufficient time, the respondent herein/appellant therein has not complied the pre-condition of deposit of 12.5% of the disputed tax due i.e., Rs. 18,070/- did not appear before ADC and no reply was filed. Therefore, the appeal was rejected by the Appellate Deputy Commissioner (CT), Hyderabad Rural Division.

2. Assailing the said impugned order passed by the Appellate Deputy Commissioner (CT), Hyderabad Rural Division, the respondent herein preferred appeal T.A. No. 58 of 2011 before Sales Tax and VAT Appellate Tribunal,

Hyderabad, and the same was allowed under the impugned order.

3. Aggrieved by the impugned order passed by the Sales Tax and VAT Appellate Tribunal, Hyderabad, the present revision is preferred by the State on the ground that payment of deposit of 12.5% under Section 31 proviso 2 of VAT Act or Section 19(3)(C) and (4) of the APGST Act, 1957 is mandatory, but the appellate Court erroneously directed the Appellate Deputy Commissioner (CT), Hyderabad Rural Division to admit the appeal.

4. During the course of arguments, the learned counsel for the revision petitioner reiterated the same ground, whereas the counsel for the respondent argued that the order passed by the appellate Tribunal needs no interference by this Court.

5. Considering the rival contentions and on perusing the material available on record, the sole point that arises for consideration is:-

"Whether non-deposit of 12.5% disputed tax entails rejection of appeal, more particularly, when tax deferment was given to the respondent herein?"

POINT:-

6. The observation/finding of Sales Tax and VAT Appellate Tribunal is as follows:

"In view of the tax deferment by the Department of the Commissioner of Industries, Hyderabad, in file No. 10/2/8/2563, dated 02.01.1999 under Target 2000-New Industrial Policy-G.O.Ms. No. 134 Inds. & Com. (IP) Department dated 01.07.1996, fixing final eligibility for sales tax deferment as Rs. 42,29,920/-, in which the balance tax of Rs. 4,10,258/- as shown by the assessing authority by his order dated 18.03.2009, was squarely covered. On the strength of the same, compliance of pre-condition of 12.5% need not be complied in view of the tax deferment."

7. The revenue disputed the said order on the ground that merely because there is an deferment of tax by the Commissioner of Industries in the proceedings referred supra, he cannot avoid pre-deposit of 12.5% to entertain an appeal against the order of assessment and placed reliance on two unreported judgment between Swastic Oleuchems Limited, Hyderabad Vs. State of Andhra Pradesh in T.R.C. No. 72 and 88 of 2011, dated 27.01.2012, wherein the High Court held that, "the second proviso to Section 19(1) of APGST Act mandates that the appellate authority shall not admit the appeal filed by the dealers unless the proof of payment of admitted tax and 12.5% of the difference of tax assessed and tax admitted is paid and a dealer availing deferment of tax cannot plead that is not required to deposit the said amount on the ground that as entire tax is deferred, it is deemed that the entire tax is paid and as such no further deposits is necessary."

8. In Ankamma Trading Company case decided along with batch of five writ petitions along with W.P. No. 27885 of 2010, the similar question came up before this Court where this Court observed as follows:-

"As a result it must be held that payment of the admitted tax/12.5% of the disputed tax beyond the period of 60 days from the date of receipt of a copy of the order of the assessing authority would disable the appellate authority from admitting the appeal. As in all the cases, which form part of the payment of admitted tax/12.5% is beyond the aforesaid time limit, all the writ petitions must fail."

9. Taking advantage of the principles laid down therein, this Court dismissed those petitions.

10. Another judgment of Division Bench of this Court reported in Cassell and Co. Ltd. v. Broome, (1972) 1 All ER 801, wherein the Division Bench of this Court held that "The second proviso to Section 31 of the APVAT Act mandates that where a dealer does not dispute any tax liability, such amount must be deposited in full before availing the right of an appellate remedy. The later part of the proviso of the tax, penalty, interest or any other amount assessed". Therefore, the appeal shall not be admitted unless pre-deposit is made in compliance of Section 31 proviso (2).

11. The counsel for the revenue contended that the appellate Court ought not to have directed to admit the appeal by the Appellate Deputy Commissioner (CT), Hyderabad Rural Division, though noncompliance of pre-condition of deposit of 12.5% disputed tax and placed reliance on a judgment reported in Ranjit Impex Vs. Appellate Dy. Commissioner and Another, , wherein it is held as under:-

"As far as the first issue is concerned, it is needless to say that the conclusion arrived at by the Division Bench is absolutely justified, for a condition to entertain an appeal does not mean that the memorandum of appeal shall be returned because of such noncompliance pertaining to pre-deposit. The only consequence is that the appeal shall not be entertained which means the appeal shall not be considered on merits and eventually has to be dismissed on that ground."

12. In view of the principle laid down in the above judgment, the bar under Tamilnadu VAT Act, Section 51 which is similar to the present provision 19(1) 3(b) and 4(b) of A.P.G.S.T. Act equivalent of Section 31 of A.P. VAT Act. While considering the pre-condition to entertain an appeal in Tamilnadu VAT Act, the Supreme Court held that when precondition of deposit of 12.5% was not complied, the appeal cannot be decided on merits and the same shall be taken into consideration at the time of consideration of the appeal. But it is liable to be rejected. In Tamilnadu VAT Act, the appeal shall not be entertained, but in AP VAT Act, appeal shall not be admitted; "entertain" means taking on file but whereas "admitted" means, proceeding to decide having found some legal questions required to be decided. As such, entertaining appeal is a preliminary and admitting appeal is next to entertaining. Hence, for deciding, deposit is pre-condition. If the principle laid down in the above judgment is applied to the present facts of the case, the revision is liable to be allowed since the respondent

failed to comply pre-condition of deposit of 12.5% of disputed tax since the appeal shall not be admitted that means to proceed further for hearing.

13. The appellate Tribunal only based its finding on deferment of tax granted by the Commissioner of Industries in the proceedings referred supra. When a similar question came up before this Court in Sioastic Oleachems Limited case, this Court consistently held that merely because the dealer is availing deferment of tax, he cannot plead that he is not required to deposit the said amount on the ground that the entire tax is deferred. It is deemed that the entire tax is paid and as such no further deposit is necessary.

14. Thus, in view of the principle laid down in the above judgment, it is not open to the respondent to claim exemption from deposit of 12.5% disputed tax which is pre-condition for admitting an appeal by the Appellate Deputy Commissioner only on the ground that tax has been impounded by the Commissioner of Industries. Therefore, the reasoning recorded by the appellate Court is contrary to the law laid down by this Court in Sioastic Oleachems Limited case. Hence, by applying the principle laid down in the above judgment, we find that it is a fit case to set aside the impugned order passed by the Appellate Tribunal in T.A. No. 58 of 2011, dated 31.05.2012, as the order impugned is contrary to law laid down by this Court. However, we find that it is a fit case to direct the petitioner to comply pre-condition of deposit of 12.5% within 15 days and take the appeal on file since the respondent prosecuted the proceedings bona fidely. Accordingly, the point is held in favour of the revenue and against the respondent. In the result, the TREVC is allowed setting aside the order impugned passed by the appellate Tribunal, dated 31.05.2012 in T.A. No. 58 of 2011 directing the respondent to comply the pre-condition under Section 31, 2nd proviso of AP VAT Act, within a period of one month and the Commissioner shall entertain and admit the appeal and decide in accordance with law. No costs. In consequence, Miscellaneous Petitions, if any pending in this petition shall stand closed.

