(1995) 10 AP CK 0039

In the Andhra Pradesh High Court

Case No : T.R.C. No. 33 of 1992

State of Andhra Pradesh APPELLANT

Vs

Rasi Cement Limited RESPONDENT

Date of Decision : 19-10-1995

Acts Referred:

Andhra Pradesh General Sales Tax Rules, 1957 — Rule 33(2)

Citation : (1996) 103 STC 255

Hon'ble Judges : P. Venkatarama Reddi, J;P. Ramakrishanam Raju, J

Bench : Division Bench

Judgement

P. Venkatarama Reddi, J.—The State of Andhra Pradesh has filed this tax revision case aggrieved by the order of the Sales Tax Appellate Tribunal holding that the institution fee payable under rule 33(2) of the Andhra Pradesh General Sales Tax Rules for filing an appeal before the Appellate Deputy Commissioner, Commercial Taxes, should be as per the pre-amended rule and the amendment which came into force on September 6, 1988, enhancing the fee has no application to the present case.

2. The respondent herein was assessed to tax for the year 1983-84 by an assessment order passed on August 25, 1988, under the Central Sales Tax Act. Against this order, an appeal was filed on September 27, 1988, i.e., after the amendment to the rule came into force.

The rule, as amended, reads as follows :

"33. (2)(i) Every such appeal shall be in form I and verified in the manner specified in the rules.

(ii) It shall be in duplicate.

(iii) It shall be accompanied by a treasury receipt in support of having paid :

(a) in case where the levy of tax and surcharge or penalty is disputed, a fee calculated at the rate of two per cent of the disputed tax and surcharge or penalty subject to a minimum of Rs. 50 and a maximum of Rs. 1,000; and

(b) in all other cases a fee of Rs. 50."

3. Earlier, the appeal fee prescribed was 1 per cent of the disputed tax subject to the maximum of Rs. 50. This fee was prescribed long back, i.e., at the inception of the Act and continued for nearly two and half decades. The contention of the respondent-assessee was that he was liable to pay the appeal institution fee at the old rate inasmuch as the assessment order was passed prior to the amendment of the rule and the assessment year was also prior to the amendment. It is submitted that a right to file appeal had accrued to the petitioner at least on the date of passing of the assessment order if not earlier and that right cannot in any way be fettered or interfered with by prescribing a more onerous condition. In other words, it was the case of the respondent that the old rule continued to regulate the manner and conditions subject to which the appeal had to be filed and a rule which came into force after the assessment order was passed cannot be applied to an appeal filed against that assessment subsequent to the amendment. This contention was accepted by the Tribunal.

4. The learned Government Pleader has placed reliance on the Division Bench judgment of this Court in Writ Petition No. 10446 of 1989 dated June 18, 1992, reported in Srinivas Enterprises v. Appellate Dy. Commissioner of Commercial Taxes, Hyderabad (1992) 15 APSTJ 57, wherein a similar contention was rejected by the Division Bench. We are of the view that the point arising in this tax revision case is concluded by the aforementioned Division Bench decision wherein an identical question was decided by the Division Bench. The view taken by the Tribunal cannot be sustained in the light of the said judgment. The Division Bench referred to the decision of the Supreme Court in Hoosein Kasam Dada (India) Ltd. v. State of Madhya Pradesh [1953] 4 STC 114 and State of Bombay Vs. Supreme General Films Exchange Ltd., which are relied upon by the learned counsel for the assessee in the present case also. This is what the Division Bench had observed in the concluding paragraph :

"From the above decisional law it emerges that right of appeal is a substantive right which cannot be impaired by a subsequent amendment unless the language of the amendment is express or retroactivity can be necessarily inferred from it. An impairment of right of appeal can be inferred only when the amendment whittles down the right of appeal or imposes an onerous condition disabling an applicant from approaching the appellate forum. Applying this test it has to be seen whether Act No. 25 of 1988 impairs the right of appeal of the petitioner herein. The only change brought about by Act No. 25 of 1988 is enhancement in institution fee subject to a maximum of Rs. 1,000. In the instant case the petitioner was asked to pay the differential institution fee of Rs. 242. Can it be said that such a requirement has the effect of impairing the right of appeal of the petitioner ? Our answer is an emphatic ''no''. The forum as well as the procedure remained the same except to the extent of enhancement of institution fee to a very limited extent prescribing a ceiling of Rs. 1,000. This procedural change brought about by Act No. 25 of 1988, in our opinion, will not disable any assessee from approaching the appellate forum. It is true that the amendment has brought about a change in the payment of institution fee, but the change is not of such a nature as to whittle down the very right of appeal itself. If not being in any manner onerous, we hold that the view taken by the 2nd respondent-Deputy Commissioner in rejecting the appeal on the ground of failure to deposit the institution fee is correct. The order of the Division Bench in T.R.C. No. 300 of 1990 dated September 5, 1990 (State of Andhra Pradesh v. Shiv Shankar Oil Mill), with great respect to the learned Judges, we are constrained to hold is per incuriam since the binding precedents laying down relevant tests have not been noticed."

5. The learned counsel for the respondent pointed out that in that case, the enhanced institution fee was Rs. 242 only and therefore the learned Judges did not consider that such enhanced fee had a tendency to curtail the right of appeal, whereas in the present case, the learned counsel points out that the assessee was called upon to pay the maximum of Rs. 1,000. In other words, the learned counsel for the assessee wants to confine the applicability of the decision to the facts of that case. We do not think that the decision was rendered on the particular facts of that case. In our understanding, there was a clear enunciation of the principle by the Division Bench consisting of M. N. Rao and Reddeppa Reddy, JJ. If the test of hardship or prejudice is to be applied, that test breaks down on the facts of the instant case as well, just as in that case. In the instant case, the respondent is disputing a tax of Rs. 3.40 lakhs whereas in the case considered by the Division Bench, the tax involved was about Rs. 14,615. It cannot be said on any reasonable view of the matter, the assessee, who is saddled with a tax liability of more than Rs. 3 lakhs, will suffer serious difficulty or prejudice in paying a sum of Rs. 1,000 towards institution fee. It can hardly be said that the condition requiring payment of Rs. 1,000 by an assessee whose disputed tax liability exceeds one lakh or more will impair the right of appeal. Equally, it cannot be considered to be such an onerous condition as to disable an aggrieved assessee from filing the appeal. The ratio of the Division Bench judgment will, therefore, squarely apply to this case as well.

The learned counsel for the respondent has drawn our attention to the following passage in Hoosein Kasam Dada''s case [1953] 4 STC 114 (SC) :

"A right of appeal is not merely a matter of procedure. It is a matter of substantive right. This right of appeal from the decision of an inferior Tribunal to a superior Tribunal becomes vested in a party when proceedings are first initiated in, and before a decision is given by, the inferior court.

A pre-existing right of appeal is not destroyed by an amendment if the amendment is not made retrospective by express words or necessary intendment. The fact that the pre-existing right of appeal continues to exist must, in its turn, necessarily imply that the old law which created that right of appeal must also exist to support the continuation of that right. As the old law continues to exist for the purpose of supporting the pre-existing right of appeal that old law must govern the exercise and enforcement of that right of appeal and there can then be no question of the amended provision preventing the exercise of that right."

6. From these observations, the learned counsel for the respondent, wants us to hold that the unamended provision continues to apply irrespective of the nature of the change brought about. In other words, the learned counsel Mr. Ranganath Kumar has endeavoured to argue that the nature and extent of change is not relevant and the test whether the condition imposed is onerous is also not relevant, but the old unamended rule should be applied intact and in the same form without taking note of the subsequent changes having regard to the fact that the right to file appeal had accrued to the assessee well before the amended rule came into force. We are unable to understand the observations of their Lordships of the Supreme Court in that light. The Supreme Court itself made it clear that the amended provision cannot have the effect of preventing the exercise of the right of appeal. The following observation also makes it clear that the nature and magnitude of the new condition imposed for availing of the right of appeal is also a relevant factor that could be taken into account. Their Lordships observed :

"A provision which is calculated to deprive an assessee of the unfettered right of appeal cannot be regarded as a mere alteration in procedure."

Whether the new provision has the tendency to deprive an aggrieved party of the right of appeal is the test formulated by the Supreme Court. In that case, by the amended provision, the Legislature made it incumbent on the assessee to deposit the disputed tax and penalty as a condition precedent for preferring an appeal. According to the unamended provision, only the admitted tax was liable to be paid. Naturally, the new condition prescribed was so onerous that it had the effect of preventing an aggrieved assessee to avail of the appeal remedy. It was in this context that the aforementioned observations were made.

7. The other judgment of the Supreme Court in State of Bombay Vs. Supreme General Films Exchange Ltd., does not also help the assessee. There, ad valorem court-fees was prescribed by the Court-fees (Bombay Amendment) Act, 1954. The suits were filed before that date. As the right of appeal accrued on the date of filing of the suit itself as per the law laid down by the Supreme Court in Hoosein Kasam Dada''s case [1953] 4 STC 114, the Supreme Court held that the court-fees as per the unamended provision was payable. It may be noted that as against a sum of Rs. 32, which the plaintiff was liable to pay in that case as per the old Act, the plaintiff actually paid Rs. 3,161 as per the new Act and, therefore, claimed refund of the excess amount paid by mistake. The Supreme Court upheld the judgment of the High Court ordering refund of excess court-fees. We do not think that any different principle has been laid down by the Supreme Court in this case.

At paragraph 12, it was observed :

"It is thus clear that in a long line of decisions approved by this Court and at least in one given by this Court, it has been held that an impairment of the right of appeal by putting a new restriction thereon or imposing a more onerous condition is not a matter of procedure only; it impairs or imperils a substantive right and an enactment which does so is not retrospective unless it says so expressly or by necessary intendment."

8. Payment of institution fee under the Sales Tax Act at the maximum of Rs. 1,000 for the purpose of questioning the tax liability over and above one lakh of rupees does not, in our view, stand on the same footing as the prescription of ad valorem court-fee without any limit, which the Supreme Court considered to have a tendency of impairing or imperilling the right of appeal. We do not, therefore, think that the decision of the Supreme Court in State of Bombay Vs. Supreme General Films Exchange Ltd., referred to by the Division Bench in the aforementioned case supports the contention of the respondent-assessee.

Agreeing with the view expressed by the Division Bench in Srinivas Enterprises'' case (1992) 15 APSTJ 57, we set aside the order of the Sales Tax Appellate Tribunal and allow the tax revision case. No costs.

9. Petition allowed.

