**(2012) 09 AP CK 0091**

**In the Andhra Pradesh High Court**

**Case No :** Tax Revision Case No''s. 3, 4, 7, 12, 27 and 37 of 1999

State of A.P. APPELLANT

Vs

Hindustan Cables Ltd. RESPONDENT

**Date of Decision :** 13-09-2012

**Acts Referred:**
Central Sales Tax Act, 1956 — Section 10, 9(2A), 9A

**Citation :** (2013) 57 VST 284

**Hon'ble Judges :** M.S. Ramachandra Rao, J;Goda Raghuram, J

**Bench :** Division Bench

**Advocate :** P. Balaji Varma, Special Government for Commercial Tax, for the Appellant; S. Dwarakanath, for the Respondent

**Final Decision :** Dismissed

## Judgement

Goda Raghuram, J.—The six revisions are preferred by the State-Revenue against the common order dated September 2, 1998 of the Sales Tax Appellate Tribunal, Hyderabad Bench, allowing the appeals by the common assessee-M/s. Hindustan Cables Limited, Cherlapally. The question of law presented for consideration in these revisions filed u/s 22(1) of the Andhra Pradesh General Sales Tax Act, 1957 (for short, "the 1957 Act"), is whether even in the absence of a provision under the Central Sales Tax Act, 1956 (for short, "the CST Act"), for forfeiture of excess tax collected by a registered dealer, forfeiture could be ordered by recourse to the provisions under the 1957 Act.

2. The relevant facts in brief may be noticed. The Commercial Tax Officer, Nacharam, during his visit to the administrative office of the assessee on different dates, verified the sale invoices issued by the assessee during April, 1996 to September, 1996 and noticed that the assessee collected taxes in excess of the tax remitted to the Revenue. The authority therefore proposed to forfeit the excess tax collections. The assessee in response claimed that it had only mentioned the sales tax component in the invoices but the same were not collected; and that forfeiture could be resorted to only when excess tax is

collected and not deposited to the Revenue, not when merely mentioned in the bills. The assessing authority however concluded that the assessee had collected CST in excess of what was paid to the Revenue and passed an order of forfeiture, in purported exercise of the powers u/s 30B(2) read with section 30C of the 1957 Act and ordered forfeiture.

3. The appeals preferred by the assessee to the Appellate Deputy Commissioner, CT, Hyderabad Rural Division, having been rejected, the assessee preferred further appeals to the Tribunal. The Tribunal observed that there was no substantive provision for forfeiture of sales tax under the CST Act and the provision u/s 10 of the said Act for action by way of penalties against contravention of the provision of section 9A of the CST Act does not include forfeiture, held that the Revenue cannot invoke provisions of the 1957 Act u/s 9(2A) of the CST Act, to order forfeiture. The assessee''s appeals were accordingly allowed.

4. Heard Sri P. Balaji Varma, the learned Special Government Pleader, for Commercial Taxes for the revision petitioner and Sri S. Dwarakanath, the learned counsel for the respondent-assessee (in all the revisions).

5. It requires to be noticed that the Supreme Court in India Carbon Ltd. etc. Vs. State of Assam, Indlaw SC 2003 relying on the Constitution Bench judgment in J.K. Synthetics Ltd. and Another Vs. Commercial Tax Officer and Another, ndlaw SC 2185 and following the majority view of the Constitution Bench held that there being no substantive provision in the CST Act for levy of interest on delayed payments of CST, orders by the Revenue authorities levying interest on delayed payment of CST (under provisions of section 35A of the Assam Sales Tax Act, 1947), are unsustainable and allowed the appeals. The court observed that having regard to the observations in Khemka and Co. (Agencies) Pvt. Ltd. Vs. State of Maharashtra, Indlaw SC 416, only the substantive law, namely, the CST Act must be applied by the States'' sales tax authorities while passing orders of assessment in relation to the CST Act. In J.K. Synthetics Ltd. and Another Vs. Commercial Tax Officer and Another, Indlaw SC 2185, the majority held that a provision in a statute for charging or levying of interest on delayed payment of tax must be construed as a substantive law and not a procedural law and consequently interest could be levied or charged for delayed payment of CST only when the CST Act makes a substantive provision in this behalf. In India Carbon Ltd. etc. Vs. State of Assam, Indlaw SC 2003, following J.K. Synthetics Ltd. and Another Vs. Commercial Tax Officer and Another, ] Khemka and Co. (Agencies) Pvt. Ltd. Vs. State of Maharashtra, Indlaw SC 416, the Supreme Court reiterated that interest could not be levied on delayed payment of CST by reference to provisions of the States'' sales tax enactments, in the absence of any substantive provision in the CST Act authorizing levy of interest on delayed payments of CST.

6. In view of the ratio flowing from the judgments in Khemka and Co. (Agencies) Pvt. Ltd. Vs. State of Maharashtra, J.K. Synthetics Ltd. and Another Vs.

 

Commercial Tax Officer and Another, Indlaw SC 2185 and India Carbon Ltd. etc. Vs. State of Assam, Indlaw SC 2003, it follows that forfeiture being a process requiring a substantive provision and in the absence of any provision in the CST Act authorizing forfeiture of excess tax collected by a dealer but not remitted to the Revenue, no forfeiture could be ordered by the Revenue by reference to provisions of the State Sales Tax Act, in this case the 1957 Act.

7. Sri P. Balaji Varma, learned Special Government Pleader for Commercial Taxes, however refers to the judgment of a learned Division Bench of the Kerala High Court in Leo Engineering (India) Vs. State of Kerala, to contend that the forfeiture ordered by the assessing authority and as confirmed by the Appellate Deputy Commissioner was not liable to be interfered with on the ground that the order of forfeiture was beyond the power, of the assessing authority, notwithstanding that forfeiture provisions of the 1957 Act were invoked and in the absence of a substantive provision authorizing forfeiture in the CST Act.

8. In Leo Engineering (India) Vs. State of Kerala, provisions of section 9(2B) and section 46A of the Kerala General Sales Tax Act, 1963 and rules 31C, 31D and form No. 40 of the Kerala General Sales Tax Rules, 1963 were considered to conclude that in the context of the Kerala Sales Tax enactment and the Rules, made thereunder; the Government is only a custodian of the forfeited amount for a transitional period; and once a person from whom excess tax is collected by the dealer and forfeited to the Government makes an application in form No. 40 prescribed under rule 31D along with convincing documents in proof of such collection and forfeiture by the Government, the officer who has forfeited the tax is liable to refund the excess collection to the person for whom it is collected. Section 46A of the Kerala Act was also referred to. This provision enacted a liability of penalty and forfeiture to the Government, of any sum collected by way of a tax or purporting to be by way of tax in contravention, of section 22(2) or (3). The Kerala High Court on its analysis concluded that provisions of the CST Act enable application of the local sales tax law as to the procedure in regard to assessment, collection of tax and enforcement of payment of tax and this regime "takes in the scheme for forfeiture of excess tax collected and for reimbursement of the same to the buyers from whom it is collected. We feel the scope of section 46A is consistent with the provisions of the CST Act and action taken under the said provision cannot be questioned for want of jurisdiction".

9. With respect and in our considered view the analyses and conclusion in Leo Engineering (India) Vs. State of Kerala, does not proceed on a correct appreciation of the ratio in Khemka and Co. (Agencies) Pvt. Ltd. Vs. State of Maharashtra, Indlaw SC 416 and J.K. Synthetics Ltd. and Another Vs. Commercial Tax Officer and Another, Indlaw SC 2185 as reiterated in India Carbon Ltd. etc. Vs. State of Assam, ndlaw SC 2003. In India Carbon Ltd. etc. Vs. State of Assam, Indlaw SC 2003 the Supreme Court relying on the Constitution Bench judgment in J.K. Synthetics Ltd. and Another Vs. Commercial Tax Officer and Another, Indlaw SC 2185 relied on the ratio propounded therein

 

that "provision by which the authority is empowered to levy and collect interest, even if construed as forming part of the machinery provisions, is substantive law for the simple reason that in the absence of contract or usage interest can be levied under law and it cannot be recovered by way of damages for wrongful detention of the amount". In J.K. Synthetics Ltd. and Another Vs. Commercial Tax Officer and Another, Indlaw SC 2185 the court observed "any provision made in a statute for charging or levying interest on delayed payment of tax must be construed as a substantive law and not adjectival law".

10. In view of the binding precedents in Khemka and Co. (Agencies) Pvt. Ltd. Vs. State of Maharashtra, J.K. Synthetics Ltd. and Another Vs. Commercial Tax Officer and Another, India Carbon Ltd. etc. Vs. State of Assam, Indlaw SC 2003, the inference is compelling that a provision for forfeiture of tax is a fortiori a substantive provision and not a mere procedural prescription. Since the CST Act contained no provision authorizing forfeiture of excess tax collected but not remitted to the Revenue, no forfeiture could be ordered by reliance merely on forfeiture provisions in the 1957 Act, provisions of which could only be recoursed to assess, reassess, collect and enforce payment of any tax or other substantive provisions of the CST Act.

11. Since the conclusion of the Tribunal accords with the ratio flowing from the judgment in Khemka and Co. (Agencies) Pvt. Ltd. Vs. State of Maharashtra, J.K. Synthetics Ltd. and Another Vs. Commercial Tax Officer and Another, India Carbon Ltd. etc. Vs. State of Assam, Indlaw SC 2003, we find no question of law falling for consideration in these revisions by the Revenue. These revisions are accordingly dismissed, but in the circumstances, without costs.