(2007) 11 AP CK 0014

In the Andhra Pradesh High Court

Case No : Writ Petition No. 720 of 2007

Subbaiah Chetty APPELLANT

Vs

The Commercial Tax Officer RESPONDENT

Date of Decision : 23-11-2007

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 33, 33A, 33B, 33C, 33E

Citation : (2009) 20 VST 522

Hon'ble Judges : Nooty, J;Bilal Nazki, J

Bench : Division Bench

Advocate : M.V.J.K. Kumar, for the Appellant; A.V. Krishna Koundinya, Special Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Bilal Nazki, J.—The petitioner was assessed for sales tax on Palmolive oil from 01.04.1994 to 15.08.1994. Tax was levied at the rate of 8% by treating that Palmolive oil fell under First Schedule of the Andhra Pradesh General Sales Tax Act, 1957 (for short ''the Act'') on a premise that the oil was purchased from outside the State and sold within the State of Andhra Pradesh. The tax was levied at the rate of 2% from 16.04.1995 to 31.03.1996. Questioning the assessment order and levy of tax at the rate of 8% from 01.04.1995 to 15.08.1995, an appeal was filed before the appellate authority. The appellate authority, on the basis of a judgment of Supreme Court in Anand Commercial Agencies v. Commercial Tax Officer 25 APSTJ 254, allowed the appeal, directing the assessing authority to levy tax at the rate of 2%. The revisional authority, Hyderabad revised the orders of both the assessing authority and the appellate authority on the assumption that both the orders were prejudicial to the State and he was of the view that the Supreme Court''s decision was mis-interpreted. The order of the revisional authority was questioned before the Sales Tax Appellate Tribunal (for short ''the Tribunal'') by way of an appeal being T.A. No. 633 of 2001. The appeal was allowed with a finding that the tax should be levied at the rate of 2% on the sale of non- refined oil under Entry 21 of the First Schedule. It upheld the orders of the Appellate Deputy Commissioner and set aside the orders passed by the revisional authority. The petitioner contends that he was made to pay taxes, which were disputed before the Appellate Deputy Commissioner. After the appeals were allowed, he approached the respondent to refund the tax, which he was made to pay during the pendency of the appeal. He was informed that since the appellate authority''s order was subject to revision, therefore, the amounts were withheld u/s 33-C of the Act and claim was not considered. After the Tribunal decided the matter and the Joint Commissioner''s order was set aside, the respondent passed an order in Form-C on 02.05.1995 showing that the petitioner was entitled to refund of an amount of Rs. 1,86,811/-. The petitioner has made an application by way of Form-33 Refund of Claim Petition, which was considered and refund of Rs. 1,86,811/- was paid to the petitioner on 18.01.2006. The contention of the petitioner is that in terms of Section 33-B of the Act, he was entitled to refund without making any application and if the amounts were not paid within six months, the petitioner was entitled to interest on the amount. Because of the orders passed in revision, the petitioner was not paid the refund amount and the amounts were only paid to him after the orders were passed by the Tribunal. According to the petitioner, in terms of Section 33- F(2) of the Act, the interest is payable if the amounts were finally determined to be due. The petitioner, placing reliance on Section 33-F(2), made a representation on 20.02.2006, requesting the respondent to pay interest on Rs. 1,86,811/-, as the amount has been withheld u/s 33-C. The order of the appellate authority had been passed on 04.02.1998. The period of six months would expire on 04.08.1998 and the refund amount was withheld till 18.01.2006. As such, the petitioner requested that the interest should be paid from 04.08.1998 to 18.01.2006.

2. In the writ petition, it is mentioned that the request made by the petitioner by way of an application dated 20th February 2006 was still pending before the respondent and the respondent has not disposed of the representation. In this factual background, the petitioner has asked for appropriate writ, declaring the action of the respondent in not paying interest on the refund amount, to be illegal. He also sought a direction to the respondent to pay him the interest on the amount of Rs. 1,86,811/- at the rate of 12% per annum from 04.08.1998 till 18.01.2006.

3. The main contention of the respondent in the counter affidavit is that the refund became due only after the order was passed by the Tribunal and not after the order was passed by the appellate authority, because, the order passed by the appellate authority was subject to scrutiny by the revisional authority. In view of these pleadings, the only question to be answered by this Court is as to what is the date on which the refund becomes payable. Does it have a reference to a date when the competent authority records satisfaction that the order passed by the appellate authority was not in the interest of the Revenue and decides to revise the order of appellate authority or it has relevance to a date

when finally the Tribunal decides the matter.

4. Section 33 of the Act deals with refunds. Section 33-B lays down-

33-B Refund on appeal etc:

Where as a result of any order passed in appeal or other proceeding under this Act, refund of any amount becomes due to the assessee or licensee, the assessing or licensing authority shall refund the amount to the assessee or licensee without his having to make any claim in that behalf, or adjust or apply, such amount as provided in Section 33.

5. In the present case, the refund had become due to the assessee as a result of an order passed in appeal. Therefore, in terms of Section 33-B, he was entitled to refund without his making any application or claim or a request to adjust.

6. But the Revenue has a power to withhold the refund in cases mentioned in Section 33-C, which reads as under-

33-C Power to withhold refund in certain cases:

Where an order giving rise to a refund to an assessee or licensee is the subject matter of an appeal or further proceeding, or where any other proceeding under this Act is pending, and the assessing or the licensing authority is of the opinion that the grant of the refund is likely to adversely affect the revenue, the assessing or the licensing authority may, with the previous approval of the Deputy Commissioner, withhold the refund till such time as the Deputy Commissioner may determine.

7. Reading Sections 33-B and 33-C together and applying them to the facts of the present case, it becomes clear that the petitioner had become entitled to refund u/s 33-B of the Act, but the refund was withheld by the competent authority while exercising its powers u/s 33-C of the Act.

8. Ultimately, the order in revision went against the assessee and therefore, after the order of revisional authority, he was not entitled to any such refund, but the matter did not rest there and he filed an appeal before the Tribunal and the Tribunal decided in favour of the assessee, restoring the order passed in appeal. Pursuant to the order of the Tribunal, the refund was made. The question relates to interest in the present case and interest on delayed refunds is covered by Section 33-E of the Act, which lays down-

33-E. Interest on delayed refunds: (1) If the assessing authority or the licensing authority does not grant the refund within six months from the date on which the claim for refund is made by the assessee or licensee u/s 33- A, the State Government shall pay the assessee or licensee simple interest at twelve percent per annum on the amount directed to be refunded from the date immediately following the expiry of the period of six months aforesaid to the date of the order granting the refund.

Section 33-F of the Act reads-

33-F. Interest on refund where no claim need be made:

(1) Where a refund is due to the assessee or licensee in pursuance of an order referred to in Section 33-B and the assessing or the licensing authority does not grant the refund within a period of six months from the date of such order, the State Government shall pay to the assessee or the licensee simple interest at twelve percent per annum on the amount of refund due from the date immediately following the expiry of the period of six months aforesaid to the date on which the refund is granted.

(2) Where the refund is withheld under the provisions of Section 33-C the State Government shall pay interest at the aforesaid rate on the amount of the refund ultimately determined to be due as a result of the appeal or further proceeding for the period commencing after the expiry of six months from the date of the order referred to in Section 33-C to the date the refund is granted.

9. Section 33-E lays down that if the assessing authority does not grant refund within six months from the date on which the claim for refund was made, the assessee would be entitled to interest at the rate of 12% per annum. Section 33-F(2) lays down that when refund is withheld under the provisions of Section 33-C, as was done in the present case, the State Government shall pay interest at the aforesaid rate on the amount of refund ultimately determined to be due as a result of the appeal or further proceedings for the period commencing after six months from the date of order referred in Section 33-C of the Act, to the date the refund was granted. So, this provision does not leave any room to doubt that the point of reference for determining the interest would be the order passed u/s 33-B of the Act, which lays down that the licensing authority shall refund the assessee without his having made any application and if it is read along with Section 33-F(2), it becomes further clear that as a result of further appeal, the point of reference would be the order made u/s 33-C of the Act. So, the interest, in our view, would be payable from a date after six months of the order having been passed u/s 33-C of the Act, withholding the refund. In the present case, the order withholding the interest was passed on 04.02.1998. So, in our view, the interest is payable in the present case, commencing from the expiry of six months from 04.02.1998 till 18.01.2006 when the payment was finally made. The learned Counsel for the petitioner has submitted that the refund cannot be withheld unless there was an order passed u/s 33-C and in the present case, there is no evidence that an order u/s 33-C was passed by the authority concerned at any stage. In this connection, he refers to the judgments of Supreme Court in Diamond Cycle (P.) Ltd. Vs. State of Haryana and Another, and in Golden Bar & Restaurant v. Commercial Tax Officer 22 APSTJ 257 We do not think it is necessary to go into these judgments in view of what has been stated by us hereinabove.

10. For these reasons, the writ petition is allowed and the petitioner is held

entitled to interest at the rate of 12% per annum on Rs. 1,86,811/- (Rupees one Lakh eighty six thousand eight hundred and eleven only) from 04.08.1998 till 18.01.2006. No order as to costs.

