(1995) 07 AP CK 0031

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16097 of 1987

Surya and Co. APPELLANT

Vs

Special Assistant Commercial Tax Officer and Another RESPONDENT

Date of Decision : 04-07-1995

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 25, 30, 30(1), 32, 32(1)

Citation : (1998) 111 STC 768

Hon'ble Judges : Y. Bhaskara Rao, J;M.H.S. Ansari, J

Bench : Division Bench

Judgement

M.H.S. Ansari, J.—The above writ petition has been filed for declaration that the compounding fee collected pursuant to the order dated June 15, 1987 issued by the first respondent is illegal and is vitiated by coercion and consequently to direct refund of the same. Alternatively, it is contended that the composition amount collected from the petitioner cannot exceed Rs. 3,000 and consequently the excess amount collected over and above that amount is to be refunded to the petitioner.

2. The brief facts are that in February, 1987, the petitioner obtained a contract from the District Educational Officer and Secretary, Zilla Grandhalaya Samstha of Krishna District for supply of various goods such as paper, general goods pursuant to tenders called by the said authorities. The petitioner applied for registration in April, 1987 as dealer under the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter referred to as "the Act"). The registration was granted on April 28, 1987 but with effect from April 1, 1987. As the budgetary provisions in ''the financial year 1986-87 would lapse by March 31, 1987, the petitioner supplied the goods to the said District Educational Officer in the last week of March, 1987 and raised credit bills along with advance stamped receipts. The payment for the same was made by cheque dated March 31, 1987, but issued on April 5, 1987. The petitioner did not file return for March, 1987 since it bonafide thought that it can file return only for the business done after obtaining

certificate of registration. Respondents 1 and 2 accompanied by the Deputy Superintendent of Police and other staff of Enforcement and Vigilance Cell, inspected the business premises of the petitioner on June 15, 1987. The petitioner gave a statement at the time of inspection that it was willing to pay tax due on the sales made by it. Accordingly, a sum of Rs. 27,116 was determined as the tax and was paid by the petitioner to the respondents during inspection itself. It is alleged that the respondents coerced the petitioner to pay a sum of Rs. 27,116 as compounding fee and the petitioner paid the same to avoid the threat of arrest. In these proceedings the order compounding the offence is assailed. The first contention of the learned counsel for the petitioner is that the impugned order is vitiated on the ground of coercion and the petitioner has not voluntarily offered to compound the alleged offence.

3. The learned Government Pleader has drawn our attention to an unreported decision of this Court in W. P. No. 10668 of 1993 dated September 8, 1993 to which one of us (Mr. Bhasker Rao, J.) is a party. In that case after examining the statement recorded at the time of inspection and the material on record, the contention of the petitioner that compounding was under coercion, undue influence or threat was negatived. Another decision of this Court in Sree Rama Trading Company, Proddatur v. Commercial Tax Officer (Int.) No. 1, Hyderabad (1989) 8 APSTJ 57 has been referred and relied upon by the learned Government Pleader for Commercial Taxes. In that case it was held relying upon various judgments of the Supreme Court that the discretionary jurisdiction under article 226 of the Constitution should be exercised only where there is substantial failure of justice or in furtherance of the aims of justice. On facts, it was found in that case, that the petitioner when faced with certain allegations of violations thought it is better to compound the matter and put an end to the controversy instead of fighting it out. Having agreed and then paid the amount, it could not turn round and seek to claim refund of the same. The court, in that case held, "whether the consent of the petitioner to compound the offence was obtained under duress or whether it was given voluntarily, cannot be decided unless an enquiry into facts is made, wherein evidence is recorded of both sides". It was further held that "there is no presumption that just because the notice to compound emanated from the officer there was duress".

4. In the light of the above authorities, we reject the contention of the petitioner that the impugned notice is vitiated by duress or coercion.

5. The alternative contention of the petitioner merits consideration. It is contended by the learned counsel for the petitioner that according to section 32(1) (b) of the Act, the maximum compounding fee that could be collected is Rs. 3,000. Thus any amount collected over and above the said amount, it is contended, is liable to be refunded. It would be appropriate to examine the provisions of section 30 which deals with offences and penalties and section 32 which deals with composition of offences. In so far, as it is relevant for the instant case, section 30(1) of the Act is extracted :

"30. Offences and penalties. - (1) Any person who -

(a) fails to pay within the time allowed, any tax assessed on him or any penalty levied, or any fee due from him under this Act; or

(b) being a person obliged to register himself as a dealer under this Act, A does not get himself so registered; or

(c) wilfully acts in contravention of the provisions of this Act or the rules made thereunder;

shall, on conviction, be liable to be punished with fine which shall not be less than five hundred rupees but which may extend to tax recoverable whichever is greater, and

(b) in other cases a sum of money not exceeding three thousand rupees."

6. The question that arises for consideration is whether the case of the petitioner falls u/s 32(1) (b) of the Act as contended by the learned counsel for the petitioner or u/s 32(1) (a) of the Act as contended by the learned Government Pleader. The show cause notice dated June 15, 1987 issued by the respondent No. 1 to the petitioner states that the petitioner has committed the offence punishable u/s 30(1) (c) of the Act and before the petitioner is prosecuted, option is given to the petitioner to compound the offence. The impugned order referred to, as the compounding order also refers to compounding of the offence u/s 30(1) (c). It would be appropriate to extract the relevant portion of the order impugned in this writ petition :

"M/s. Surya & Co., in Machilipatnam hereby informed that in the opinion F of the Commercial Tax Officer, Machilipatnam, they have committed the offence punishable u/s 30(1) (c) of the Andhra Pradesh General Sales Tax Act, 1957 as noted in the O. R. notice dated June 15, 1987.

They appeared before the undersigned on June 15, 1987 and offered to have the offence compounded in a sum of Rs. 27,116 (rupees twenty-seven thousand one hundred and sixteen only) departmentally, this officer is accepted. The sum of Rs. 27,116 (rupees twenty-seven thousand one hundred and sixteen only) should be paid within ten days of receipt of this notice."

7. A perusal of clause (a) of section 32(1) of the Act, extracted above, would show that it deals with compounding of two specified offences, viz.,

(i) failure to pay any tax recoverable under the Act,

(ii) evasion of tax

Clause (b) of section 32(1) deals with compounding of all offences which do not fall under clause (a).

8. As is apparent from the show cause notice as well as the compounding order, the charge against the petitioner is not for failure to pay the tax or evasion of

tax. The gravaman of the charge against the petitioner is u/s 30(1) (c). In our opinion, the same would fall under the residuary clause of section 32(1) (b). Learned counsel for the respondent contends that an offence punishable under clause (c) of sub-section (1) of section 30 viz., wilful contravention of the provisions of the Act or the rules made thereunder would fall u/s 32(1) (a). Non-payment of tax and evasion of tax would constitute contravention of the Act and thus squarely fall u/s 32(1) (a).

9. It must be borne in mind that section 30 of the Act is a penal provision and it must, therefore, be strictly construed. Power has been conferred on the authorities to compound the offences in appropriate cases and levy compounding fee. As already noticed above, section 32(1) (a) of the Act deals with two specific offences. All other offences not failing u/s 32(1) (a) which can be compounded a maximum compounding fee of Rs. 3000 has been prescribed under the residuary clause (b) of section 32(1). If the contention of the learned Government Pleader is to be accepted then every contravention of the provisions of the Act or the rules made thereunder would fall u/s 32(1) (a) rendering the provisions of clause (b) of section 32(1) redundant or superfluous. Before an offence can be compounded u/s 32 of the Act, there must be commission of offence, the person committing the offence must be charged with that offence. The charge must be specific. There is no scope for inference to be drawn from the charge memo or show cause notice. The person must be imputed with the knowledge of the offence committed and that offence alone can he compounded. An offence not committed, or if committed and not charged with, it cannot be compounded. If compounded, it would be illegal exercise of jurisdiction.

10. It can he seen from a perusal of section 30 that specific offences have been enumerated, which though constitute violations of different provisions of the Act, are treated differently for purposes of fines and penalties. Keeping in view the said distinction, the Legislature has in enacting section 32(2) of the Act prescribed different scales of fee for compounding different categories of offences enumerated. It cannot therefore be contended that all violations of the Act specified in section 30(1) (c) would fall under sub-clause (a) of section 32(1).

11. This Court on several occasions has considered the applicability of clauses (a) and (b) of section 32(1) of the Act with reference to the offence alleged to have been committed for purposes of compounding.

12. Learned Government Pleader has drawn our attention to a judgment of this Court reported in Kaki Butchi Raju Son v. State of Andhra Pradesh [1995] 96 STC 634. In that case the suppressed turnover was detected during the course of inspection based on the account slips recovered and non-maintenance of ledger and stock register. This Court found that it was a clear case of evasion of tax failing under clause (a) of sub-section (1) of section 32. That case is of no assistance to the respondent in as much as the offence was one clearly of evasion of tax.

13. The learned counsel for the petitioner has drawn attention to the case of Sree Rama Trading Company v. Commercial Tax Officer (Int.), No. 1, Hyderabad (1989) 8 APSTJ 57 wherein this Court noted that the two violations relevant to that case were (i) variation in stock and (ii) improper maintenance of books. The said offences were held, do not fall under clause (a). This case has been followed and relied on by this Court in Ratnam Glass and Crockery House, Guntur v. Commercial Tax Officer (Int.), Guntur (1990) 10 APSTJ 73. In Sri Raghavendra Oil Mills, Jadcherla Mahaboobnagar v. Assistant Commercial Tax Officer (Int.), Mahaboobnagar (1990) 10 APSTJ 23, this Court relying upon officer (Sree Rama Trading Company case (1989) 8 APSTJ 57 held :

"The notice clearly shows incorrect maintenance of accounts and evasion of tax. From the notice, it is evident that the dealers have wilfully failed to maintain true and correct accounts as required u/s 25 of the Act read with rule 45 of the Rules and thus committed an offence punishable u/s 30(1) (c) of the Act. Thus the main offence is one of failure to maintain true and correct accounts and, therefore, the case squarely falls under the ratio laid down by the Division Bench. In the circumstances, there shall be a direction to the respondents to collect at the rate of Rs. 1,000. The excess amount, if collected, is directed to be refunded."

14. In P.V. Raghavulu and Co. Vs. Special Assistant Commercial Tax Officer, Renigunta, Chittoor District and Others, , it was held :

"A reading of sub-section (1) shows that clause (a) is attracted only where the offence consists of the failure to pay, or evasion of tax due. In other cases, it is clause (b) that applies. In this case, as stated above, the composition amount was levied not on the ground that there was failure to pay the tax due or that there, was any evasion of tax due, but on the ground that the petitioner had issued spurious sale bills in order to hoodwink the department without actually transporting 50 drums of groundnut oil. Evidently, the case falls under clause (b); it cannot fall under clause (a). If so, the amount of composition could not have exceeded Rs. 1,000."

15. In the instant case, the petitioner is charged with having committed the offences punishable u/s 30(1) (c) of the Act, viz., (i) doing business during the year 1986-87 without getting themselves registered under the Andhra Pradesh General Sales Tax Act and (ii) petitioners have done business in stationery, paper and general goods, etc., as detailed therein. The compounding order, in the instant case, shows that the composition amount was levied not on the ground that there was failure to pay tax or that there was any evasion of tax due. Sub-sections (3) and (8) of section 30 deal, inter alia, with evasion of tax. These sub-sections have not been referred or relied upon in the impugned order.

16. Relying upon the ratio of the decision cited above and in the facts and circumstances of the instant case, we hold that the case of the petitioner falls under clause (b) of sub-section (1) of section 32. The maximum compounding fee that can therefore be levied is Rs. 3,000, as prescribed. We therefore uphold

the contention of the learned counsel for the petitioner and allow the above writ petition in part. Accordingly the impugned order is partly quashed and there shall be a direction to the respondents to refund the amount levied and collected by the respondents from the petitioner in excess of the sum of Rs. 3,000 pursuant to the impugned order. In the circumstances, we make no order as to costs.

17. Writ petition partly allowed.

