

(2001) 06 AP CK 0019

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 11933 and 13114 of 1997

Voltas Ltd.

APPELLANT

Vs

State of A.P. Industries and Commerce (P.E. Cell) Dept. and
Another

RESPONDENT

Date of Decision : 08-06-2001

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 16(4)
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 18(8)

Citation : (2001) 06 AP CK 0019

Hon'ble Judges : S. Ananda Reddy, J; Bilal Nazki, J

Bench : Division Bench

Advocate : M.S. Srinivasa Iyengar, for the Appellant; Special G.P. for Taxes, for the Respondent

Final Decision : Dismissed

Judgement

Bilal Nazki, J.—These are two Writ petitions filed by the same petitioner against the State. We have heard them together and we dispose them of by common judgment.

2. In W.P. No. 13114/97 G.O.Rt. No. 66 dated 20th January, 1994 and G.O.Ms. No. 119, dated 18th August, 1995 have been challenged in so far as the said G.Os imposed monetary limits on the sales tax deferral allegedly earlier granted to the petitioner. In Writ petition No. 11933/97 the reliefs claimed in the earlier Writ petition are also claimed and mainly the orders of Tribunals i.e., Board for Industrial and Financial Reconstruction (for short BIFR) and Appellate Authority for Industrial and Financial Reconstruction (for short AAIFR) have been challenged. For the facts reference would be made to W.P. No. 11933/97 which is more comprehensive and in which the orders of the Government as well as the orders of BIFR and AIAFR have been challenged.

3. The Hyderabad Allwyn Limited (hereinafter referred as HAL) was a company with its registered office at Hyderabad engaged in various industrial pursuits.

Government of A.P was a major share holder in the company. The company suffered huge losses and became a sick Industrial company within the meaning of section 3(0) of the Sick Industrial Companies (Special Provisions) Act, 1985. The matter was taken up by BIFR. In order to make efforts to rehabilitate this company the Government of Andhra Pradesh negotiated with the petitioner company and an agreement was arrived at for the take over by the petitioner of the HAL. The terms of this agreement were incorporated in a Memorandum of understanding on 28th March, 1993. This agreement inter alia provided that the Government of A.P would extend to the HAL all the concessions which were being granted to sick industrial undertakings in the State of Andhra Pradesh. One of the reliefs granted, according to the petitioner, related to concessions with respect to sales tax. Under the industrial policy in some cases the liability to pay sales tax was waived, in some cases deferment from payment of sales tax for specific periods was granted. Pursuant to the understanding, G.O.Rt. No. 66 dated 20th January, 1994 was issued. This G.O. would assume importance in deciding the matter, therefore the G.O. is reproduced;

Government of Andhra Pradesh

Abstract

M/s Hyderabad Allwyn Limited - Deferral of sales tax for 7 years in respect of M/s Voltas Ltd. - orders - issued.

Industries and Commerce (PE cell) Department

G.O. Rt. No. 66 Dated 20-01-1994 Read:

From the Vice-President, M/s Voltas Ltd., D.O. Lr. Dated 26-3-1993.

ORDER

The Government of Andhra Pradesh has entered into an MOU with M/s Voltas Ltd., on 28-3-1993 with regard to the amalgamation of M/s Hyderabad Allwyn Ltd., with M/s Voltas Ltd., subject to the final orders of B.I.F.R.

M/s Voltas Ltd., in the letter read above have requested the Government to exempt from payment of S.T. on the products of Hyderabad Allwyn Ltd., during the first five years commencing from the date of its amalgamation with M/s Voltas Ltd., i.e., 29-03-1993.

Government after careful examination of their proposal hereby approve the following:-

- i) The benefit of S.T. deferral is extended to M/s Voltas Ltd., in the best interests and future prospects of HAL, particularly when the Government is attempting to revive a very large Public Sector undertaking.
- ii) The sales tax deferral will be upto a maximum 50% of the fresh monies which amounts to Rs. 18.50 crores to be brought in by M/s Voltas for the rehabilitation of the Refrigerator Division as per the sanctioned scheme of BIFR. Sales Tax upto

the above ceiling will be deferred for a period of 7 years.

iii) The deferral is allowed only in respect of APGST for the products manufactured in HAL and sold within the State of Andhra Pradesh.

This order issues with the concurrence of Finance & Plg. (E.I.) Dept., vide their U.O. No. 46711/A/974/E1/93, dt. 10-1-1994.

BY ORDER AND IN THE NAME OF GOVERNOR OF ANDHRA PRADESH

J. HARINARAYAN

EX-OFFICIO SECRETARY TO GOVERNMENT"

4. A Memorandum of understanding was also signed between the petitioner and Government of Andhra Pradesh. Besides other stipulations the parties in the Memorandum agreed that the provisions in the Memorandum would be subject to the orders and directions of the BIFR in the case pending before it. Thereafter, BIFR approved the scheme by its order dated 4th April, 1994. According to the petitioner the approval of BIFR was based on projections of profitability prepared by IDBI and in preparing the projections IDBI had assumed that no interest was payable on deferred sales tax. Now, it is the case of the petitioners that, going by G.Os and the scheme prepared by BIFR the deferment of sales tax was not only deferment of payment but deferment of liability. It was stated that normally liability to pay tax would incur the moment the taxable transaction takes place, since deferment was there for a period of 7 years so the liability itself did not incur or would not incur for 7 years. Therefore, the petitioners were not liable to pay interest on the deferred tax. After this memorandum of understanding came into being and after issuance of G.O. referred to above no further developments took place till 18th August, 1995 when G.O.Ms. No. 119 was issued. This G.O. amends the 1994 G.O. The amendment is reproduced;

"Government of Andhra Pradesh

Abstract

M/s Hyderabad Allwyn Limited - Deferral of Sales tax in respect of Voltas Ltd - orders - issued - Amendment to the above orders - issued.

Industries & Commerce (PE cell) Department

G.O.Ms. No. 119 dt. 18-8-1995 Read the following:

G.O.Ms. No. 66, Industries & Commerce (PE cell) Department, dated 20-1-1994.

ORDER:

The following amendment is issued to the G.O. read above;

AMENDMENT

For the existing para 3(ii) of the G.O. read above, the following para shall be

substituted;

3 (ii) The Sales tax deferral shall be limited to a maximum of 50% of the fresh monies to be brought in by M/s Voltas Limited, for rehabilitation of the Refrigeration Division as per the sanctioned scheme of Board for Industrial Financial Reconstruction or Rs. 18.50 crores whichever is less. The sales tax upto the above ceiling shall be deferred for a period of 7 years starting from 1-4-93. The amount of sales tax so deferred shall carry an interest of 18% per annum. It shall be payable after 7 years in one lumpsum.

This order issues with the concurrence of Finance and Planning Department vide U.P. No. 18622-A/111/A2/ EBS/ IND/95, dated 14-7-1995.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

K.V. RAO

SECRETARY TO GOVERNMENT"

5. By this G.O. it was clarified that the deferment of sales tax for a period of seven years to the tune of Rs. 18.50 crores would carry an interest of 18% and it shall be payable after 7 years in one lumpsum. Thereafter, according to the petitioner he protested and had some correspondence with respondent No. 1 but respondent was not willing to withdraw the orders therefore it suggested the petitioner to move BIFR vide its letter dated 25th October, 1995. The petitioner company wrote a letter to BIFR on 9th November, 1995. BIFR rejected the claim of the petitioner vide letter dated 5-12-1995, This order is a short order and is reproduced:

"ORDER:

M/s Voltas Ltd., with whom the aforesaid sick industrial company was merged under the Rehabilitation-cum-Amalgamation scheme sanctioned by us vide order dt. 4-4-94 have preferred an application dt. 9-11-95 seeking direction to the State Govt. of Andhra Pradesh to waive levy of interest on the amount of sales tax deferral granted by it vide G.O.Rt. No. 66 dt. 20-1-94 read with G.O.Ms. No. 119 dt. 18-8-95.

After having considered the grounds for the prayer we are of the view that the State Government has granted the sales tax deferral based on its policy guidelines and if those policy guidelines does not provide for interest free deferral then the benefit cannot be granted to the company. We, therefore, find no reason to interfere with the State Government policy guidelines and reject the prayer made by the applicant company."

7. Counter has been filed by Industries and Commerce Department. Material facts relating to the sickness of the HAL and its takeover by the petitioner-company have been admitted but it has been submitted that only certain divisions of HAL were taken over by M/s. Voltas. The memorandum of understanding arrived at between the parties has also been admitted. It was

stated in the counter that, during negotiations M/s. Voltas agreed to take over certain divisions of HAL subject to the condition that they would retain with them only 5,000 employees working in the refrigeration and appliances division. The HAL besides having the refrigeration and appliances division had watches division and auto body building division which had to be separated from the composite HAL and therefore the Government had to form two new companies M/s. Allwyn Watches Ltd., and M/s. Allwyn Auto Ltd. Financial liabilities to be assumed by M/s. Voltas, M/s. Allwyn Watches Ltd., M/s. Allwyn Auto Ltd., along with the Andhra Pradesh State Government were sorted out. A memorandum of understanding was entered into with M/s. Voltas Ltd., on March 28, 1993. The memorandum of understanding was subject to the directions and orders of the BIFR. M/s. Voltas had agreed to take in its books of account all the liabilities of HAL as on March 29, 1993 after transfer of assets and liabilities of watch division. M/s. Voltas had agreed to assume responsibility to discharge liabilities in excess of net book value of the assets up to Rs. 31 crores. The Voltas had represented to the Government that they should be granted exemption from payment of sales tax on HAL products for a period of 5 years from March 29, 1993. This request was examined by the Government. At that time G.O. Ms. No. 493, dated October 16, 1989 was in operation. This Government order envisaged deferment of sales tax up to a maximum period of 10 years in respect of new industrial units subject to ceiling of 50 per cent, 75 per cent or 100 per cent of capital investment. This facility was not available to the industries located in the municipal corporations of Hyderabad, Visakhapatnam and Vijayawada. The said G.O. Ms. No. 498 could not be made applicable in case of HAL as HAL was not a new industrial unit. Thereafter G.O. Ms. No. 117 dated March 17, 1993 was issued which was an incentive scheme providing concession of sales tax deferral in respect of expansion, modernisation and diversification projects involving enhancement of 25 per cent of fixed capital investment as well as enhancement of capacity by 25 per cent of products of same productive line. Such projects would be eligible for sales tax deferral for a period of 10 years from the date of deferment of the original unit. HAL was considered to be beyond the purview of the policy guidelines issued through G.O. Ms. No. 117. The Government keeping in view the provisions of memorandum of understanding and in the best interest and future prospects of HAL and also of its intention to revive a large public sector undertaking allowed sales tax deferral as a special case and issued G.O. Rt. No. 66, dated January 20, 1994 which has been reproduced hereinabove. It is submitted that after some time of issuance of order dated January 20, 1994 it was noticed that said order was silent in regard to the schedule of payment on deferred sales tax and also the interest part, therefore, the Government examined the matter in further details keeping in view the sanctioned scheme of BIFR dated April 4, 1994 and also the provisions of the A.P. General Sales Tax Act, 1957 and issued G.O. Ms. No. 119 dated August 18, 1995.

8. In the light of these pleadings now the only question to be decided by this Court is, whether the petitioner would be liable to pay interest on the deferred

sales tax. The contentions raised by the counsel for the petitioner at the Bar are; (1) that the State Government was bound by the scheme framed by the BIFR both on the basis of consensus and by virtue of section 18(8) of the Sick Industrial Companies (Special Provisions) Act.; (2) that the interest becomes payable on liability of sales tax when the sales tax becomes due and by virtue of Government order deferring the payment of sales tax the sales tax would become due only after 7 years and interest, if any, would incur not from the day it became due in terms of APGST Act but from the day it became due in accordance with the G.O; (3) that the G.O.Ms. No. 119 was contrary to the scheme prepared by BIFR and therefore was illegal; and (4) that the G.O.Ms. No. 119 was not in terms of the Memorandum of understanding arrived at between the parties.

9. Coming to the first argument let us see what did the scheme envisage with regard to the sales tax. The scheme deals with different institutions under different heads. The State Government is supposed to give many concessions and incentives. We are not concerned with all of them we are only concerned with those incentives which are with respect to the sales tax. Under the heading "State Governments" at paragraph 3 it is stated; "Unpaid statutory dues like sales tax to be funded and the amount so funded to have a moratorium of 2 years (1994-95 and 1995-96) for repayment of such dues and payment of interest thereon. Thereafter, repayment to be made in 20 equal quarterly instalments with interest at 6% p.a." Under para-4 it is stated; "Deferment of sales tax liabilities in respect of the products manufactured at Sanatnagar and Nandalur factories for a period of 7 years from the date of the final order from the BIFR approving this scheme." Now, the learned counsel for the petitioner submits that, in case of past liabilities on account of sales tax the scheme had approved interest at the rate of 6% and wherever interest was prescribed it was mentioned, since for future sales tax for which deferment was permitted there was no mention of interest therefore interest could not be recovered. This argument can be used against the petitioner also in a way that where there is no mention of charge of interest on sales tax it would mean that interest would have to be charged in accordance with the provisions of the A.P.G.S.T Act. Further contending that the scheme was mandatory and the respondent State government was bound to follow the scheme the learned counsel relied on section 18(3) of the Sick Industrial companies (Special provisions) Act. It is contended that u/s 32 of the Sick Industrial companies Act, 1985 schemes prepared under the Act shall have effect notwithstanding anything contained in any other law except the provisions of Foreign Exchange Regulation Act, 1973 and the Urban Land (Ceiling and Regulation) Act, 1976 for the time being in force. We do not want to go into that question because in the scheme which we have noted herein above we do not find that the scheme envisaged that the petitioner would not be liable to pay interest for the deferred tax. Now, let us see whether there was any such stipulation in the Memorandum of understanding which flows from the scheme. In the Memorandum of understanding clause (5)

only states that the State Government would after amalgamation of HAL with Voltas extend to HAL Division of Voltas all reliefs and concessions as are available to Sick Industrial Undertakings in the State of Andhra Pradesh. Therefore, there was no undertaking given by the State Government that there would be any deferment of interest. Since there is nothing in the scheme to suggest that the Government had undertaken not to charge interest on the deferred sales tax, therefore we do not find that the G.O. was in any way contrary to the scheme prepared. Now, coming to the question of amendment of the G.O. Rt. No. 66 by G.O.MS. No. 119 we are of the view that the G.O. 119 was only in the nature of clarification. The earlier G.O. Rt. No. 66 stated in para 3(2) that the sales tax deferral would be upto a maximum of 50% of the fresh monies to an extent of 18.50 crores as per the sanctioned scheme of the BIFR and sales tax upto the ceiling amount would be deferred for a period of 7 years. In the amendment the maximum limit of 50% and the amount of Rs. 18.50 crores has been kept as it was, 7 years deferment was kept as it was, it only stated that, the amount of sales tax so deferred shall carry an interest of 18% and it shall be payable after 7 years in one lumpsum. Therefore, it is only in the nature of clarification as to how it was to be paid. The learned counsel for the petitioner submits that there was no interest in the earlier G.O. which was imposed by the new G.O.Ms. No. 119. The learned counsel for the respondents however submits that the State was bound to charge 18% interest in terms of the statute and there was no way out and Government could have not exempted the payment of interest on the sales tax which is provided u/s 16(4) of the A.P. General sales tax Act. During the hearing of these petitions we have been taken through the provisions of A.P. General sales Tax Act. We have not found any provision by which the payment of sales tax can be deferred. Sales tax in its nature is a tax which if collected should be normally paid to the Government. This is an indirect tax collected from the persons who purchase the products and the person who collects the tax is almost a trustee. One can understand exemption on sales tax in order to provide an incentive to a new entrepreneur in order to make his products competitive in the open market. Once the exemption is granted the person to whom such exemption is granted is not supposed to collect sales tax thereby he can sell his products relatively on a lesser price than the products of an established concern. In such a situation the customer does not pay the sales tax. Therefore the Sales Tax Act gives power to the State Government to exempt products from sales tax. We have not been shown any power of the State Government by which deferment of tax can be ordered which in effect mean that the petitioner collected the tax for 7 years from the customers but did not pay it to the Government. It necessarily unduly enriched the petitioner. Therefore, in our view he cannot now claim that his tax becomes due only after 7 years and after 7 years he had already paid the tax and he is not supposed to pay the interest. There is a full scheme given under the A.P. General Sales Tax Act. Returns have to be filed regularly by allowing the deferment. The petitioners were not given an exemption from registration or from filing the returns or the Officers of the Sales tax were not exempted from making the assessment of tax. Therefore, it is not

correct that the tax became due only after 7 years after 1993. If the contentions of the petitioner are accepted then it would mean that the state had advanced a loan of Rs. 18.50 crores to the petitioner without interest which not even a Banking company would do. The tax has to be paid under the scheme prepared under the Act and the Rules made thereunder. Section 16 of the General Sales Tax Act deals with payment of tax and other dues payable under the Act. Sub-section 3(b) of section 16 makes it obligatory on the dealer to pay tax along with the return due. In this connection the learned counsel for the respondents had relied on a judgment of Madras High Court in Apollo Tubes Limited Vs. A.D.C.T.O., 93 STC 339 in which it is stated that the levy of interest would be automatic in delayed payment of tax. He also referred to judgments in Haridas Vs. Asst. Commr. Sales Tax, 44 STC 26 and Royal Boot House Vs. State of J&K, 56 STC 212 in this regard. In view of these judgments and factual position, we do not find that the State had even the power of ordering deferment on tax much less exemption in payment of interest on the deferred tax.

10. In this case we may refer somewhat in detail to a judgment of Supreme Court in Amrit Banaspati Co. Ltd. and another Vs. State of Punjab and another, . Although this was a case in different context but it would facilitate the Court in understanding the nature of the amounts collected as Sales tax. The High Court of Punjab had directed the State of Punjab to refund the sales tax collected from the Writ petitioner on the ground of promissory estoppel. It was found that the Chief Minister and the Industries Minister had declared that there would be a refund of sales tax with respect to certain entrepreneurs. The Court was dealing with the doctrine of promissory estoppel and was trying to find out whether such a promise even if made would be enforced and whether such a promise was contrary to law and against the public policy. Answering these questions the Supreme Court held;

"Taxation is a sovereign power exercised by the State to realise revenue to enable it to discharge its obligations. Power to do so is derived from entries in Lists I, II and III of the seventh Schedule of the Constitution. Sales tax or purchase tax is levied in exercise of power derived from an Act passed by a State under Entry 54 of List II of VII schedule. It is an indirect tax as even though it is collected by a dealer the law normally permits it to be passed on and the ultimate burden is borne by the consumer. But "the fact that the burden of a tax may have been passed on to the consumer does not alter the legal nature of the tax" (Halsbury's Laws of England, Vol.52, paragraph 20.04). Therefore, even a legislature, much less a Government, cannot enact a law or issue an order or agree to refund the tax realised by it from people in exercise of its sovereign powers, except when the levy or realization is contrary to a law validly enacted. A promise or agreement to refund tax which is due under the Act and realised in accordance with law would be a fraud on the Constitution and breach of faith of the people. Taxes like sales tax are paid even by a poor man irrespective of his savings with a sense of participation in growth of national economy and development of the State. Its utilization by way of refund not to the payer but to

a private person, a manufacturer, as an inducement to set up its unit in the State would be breach of trust of the people amounting to deception under law."

11. Again in para-10 and 11 of the judgment the Supreme Court stated;

"10. Exemption from tax to encourage industrialization should not be confused with refund of tax. They are two different legal and distinct concepts. An exemption is a concession allowed to a class or individual from general burden for valid and justifiable reason. For instance tax holiday or concession to new or expanding industries is well known to be one of the methods to grant incentive to encourage industrialization. Avowed objective is to enable the industry to stand up and compete in the market. Sales tax is an indirect tax which is ultimately passed on to the consumer. If an industry is exempt from tax the ultimate beneficiary is the consumer. The industry is allowed to overcome its teething period by selling its products at comparatively cheaper rate as compared to others. Therefore, both the manufacturer and consumer gain, one by concession of non-levy and other by non-payment. Such provisions in an Act or Notification or orders issued by Government are neither illegal nor against public policy.

11. But refund of tax is made in consequence of excess payment of it or its realization illegally or contrary to the provisions of law. A provision or agreement to refund tax due or realised in accordance with law cannot be comprehended. No law can be made to refund tax to a manufacturer realised under a statute. It would be invalid and ultra vires. The Punjab Sales tax Act provided for refund of sales tax and grant of exemption in circumstances specified in Ss. 12 and 30 respectively. Neither empowered the Government to refund sales tax realised by a manufacturer on sales of its finished product. Refund could be allowed if tax paid was in excess of amount due. An agreement or even a notification or order permitting refund of sales tax which was due shall be contrary to the statute. To illustrate it the appellant claimed refund of sales tax paid by it to the State Government on sale made by it of its finished products. But the tax paid is not an amount spent by the appellant but realised on sale by it. What is deposited under this head is tax which is otherwise due under provisions of the Act. Return or refund of it or its equivalent, irrespective of form is repayment or refund of sales tax. This would be contrary to constitution. Any agreement for such refund being contrary to public policy was void under S. 23 of the Contract Act. The constitutional requirements of levy of tax being for the welfare of the society and not for a specific individual the agreement or promise made by the Government was in contravention of public purpose thus violative of public policy. No legal relationship could have arisen by operation of promissory estoppel as it was contrary both to the Constitution and the law. Realisation of tax through State mechanism for sake of paying it to private person directly or indirectly is impermissible under constitutional scheme. The law does not permit it nor equity can countenance it. The scheme of refund of sales tax was thus incapable of being enforced in a court of law."

12. Going by the spirit of the judgment of the Supreme Court, if the tax levied

from the consumers has to be paid to the Government the interest has also to be paid if the payment is not made after collection of the tax in accordance with the Act. We have serious doubt as to whether the State Government at the first instance could have permitted deferment of tax for a period of 7 years even after collection from consumers but we keep this question open as it was not directly before us in these proceedings. The learned counsel for the petitioner has referred to many judgments including Sri Parvati Parameshwara cables Vs. Govt. of A.P., 99 STC 110, State of Rajasthan Vs. Ghasilal, 16 STC 318 Associated Cement Co. Ltd., Vs. Commercial Tax Officer, 48 STC 466 but we are not able to comprehend in the light of what has been stated above as to how these judgments are relevant. He vehemently relied on Supreme Court judgment in V.V.S. Sugars Vs. Govt. of 114 STC 47 A.P. but this judgment does not at all attract the facts of present case. There is no doubt that taxing statute must be interpreted as it reads and exactly we are doing the same thing. We are interpreting the Sales Tax as it reads.

13. For these reasons, we do not find merit in these Writ petitions which are accordingly dismissed. In the light of what has been stated herein above with regard to G.O.Ms. No. 119 we do not intend to comment upon the order passed by Appellate Authority for Industrial and Financial Reconstruction. No costs.