THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

Writ Petition No.41021 of 2016

ORDER: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

The impugned notice dated 13.10.2016, whereby the petitioner was called upon to pay the deferment tax amount, is questioned in this writ petition as being illegal and arbitrary. The impugned proceedings dated 13.10.2016 records that the petitioner was granted exemption in terms of G.O.Ms.No.606 dated 09.04.1981; in view of the enactment of the A.P. Value Added Tax Act, 2005 (for short "the Act"), with effect from 01.04.2005, the petitioner was converted from a tax holiday unit to a tax deferment unit under Section 69 of the Act; the balance period, after deducting the period availed upto 31.03.2005, was doubled in terms of Rule 67(5) of the A.P.Value Added Tax Rules, 2005 (for short "the Rules'); the deferred tax for the doubled period ended by 15.03.2015; W.P.No.26926 of 2016 filed by the petitioner was dismissed by the High Court on 16.09.2016; and the unpaid demand, referred to in the table, remained good.

The impugned proceedings dated 13.10.2016 contains a table wherein details of deferred tax liability for the period 2005-06 to 2014-15 both under the A.P.Value Added Tax Act and the Central Sales Tax Act, and the total amount due, are mentioned. The said proceedings, thereafter, records that the dealers were required to pay the taxes as per due dates within seven days from the date of receipt of the notice.

Sri S.Dwarakanath, learned counsel for the petitioner, would draw attention of this Court to Rule 67(5) of the Rules to contend that the liability of the dealer to repay the deferred tax amount is only on expiry of the doubled period for which exemption was granted; as the petitioner was granted exemption on 25.03.2005, for a period of five years upto 25.03.2010, doubling the period in terms of Rule 67(5) of the Rules would result in the petitioner not being liable to repay the deferred tax amount till 31.03.2015; their liability to pay the deferred tax amount for the year 2005-06 would arise only in April 2015, for the year 2006-07 in April 2016 and, for the remaining years, annually from April 2017 onwards; and the impugned proceedings dated 13.10.2016, calling upon the petitioner to pay the deferred tax, for the subsequent period, is illegal.

Sri J.Anil Kumar, learned Special Standing Counsel for Commercial Taxes, would contend that the impugned proceedings dated 13.10.2016 is merely a consequence of the earlier proceedings dated 27.07.2016 which was subjected to challenge in W.P.No.26926 of 2016; the said writ petition was dismissed as withdrawn without liberty to initiate proceedings afresh; as such a contention was available, but was not raised in the earlier writ petition, the petitioner is not entitled to raise it in the present writ petition; and in paragraph 11 of the writ affidavit it is falsely stated that the petitioner was advised to withdraw the writ petition seeking liberty to file a fresh writ petition, despite the fact that the earlier order of this Court did not grant them any liberty.

Explanation IV to Section 11 of the Code of Civil Procedure, 1908 disables any matter, which might and ought to have been made a ground of defence or attack in such former proceedings, from being raised in a subsequent proceedings. Based on this provision, the learned Special Standing Counsel contends that the validity of the impugned proceedings dated 13.10.2016 cannot be examined in the present Writ Petition.

When we asked whether the respondents were seeking to recover the deferred tax amount due for the years subsequent to 2006-07 also, Learned Special Standing Counsel would fairly state that the Deputy Commercial Tax Officer had merely requested the dealer to pay taxes as per the due dates; and, as the deferment amount for the years 2005-06 and 2006-07 were alone due by April 2015 and April 2016 respectively, the impugned proceedings required the petitioner only to pay the deferred tax amount for the aforesaid two years 2005-06 and 2006-07.

While Sri J.Anil Kumar, learned Special Standing Counsel for Commercial Taxes, submitted that the petitioner was called upon to pay the deferred tax amount only for the years 2005-06 and 2006-07, Sri S.Dwarakanath, learned counsel for the petitioner, would submit that the petitioner is liable to pay the deferred tax amount for these two years i.e 2005-2006 and 2006-07 only in terms of Rule 67(5) of the Rules as upheld by a Division Bench of this Court in ***Maks Castings P. Ltd. Vs. Government of A.P.***[1].

As the petitioner is, admittedly, liable to pay the deferred tax amount for the years 2005-06 and 2006-07, they shall pay the said amount within four weeks from today failing which it is open to the respondents to proceed and recover the said amount in accordance with law. We see no reason, in such circumstances, to examine the contention, urged on behalf of the respondents, regarding the applicability of Explanation IV to Section 11 C.P.C.

The Writ Petition is, accordingly, disposed of. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(A.SHANKAR NARAYANA, J)

30th November, 2016
JSU

[1] (2011) 38 VST 354 (AP)

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

Writ Petition No.41021 of 2016

Date: 30.11.2016

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