THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

T.R.E.V.C.NO.18 OF 2016

ORDER: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

This revision, under Section 22(1) of the APGST Act ("the Act" for brevity), is preferred against the order passed by the Sales Tax Appellate Tribunal, A.P., Visakhapatnam ("the Tribunal" for brevity) in T.A.No.783 of 2005 dated 08.04.2015.

The petitioner herein is the appellant before the Tribunal. They invoked the jurisdiction of the Tribunal against the order passed by the Appellate Deputy Commissioner dismissing their appeal against the final assessment order passed by the CTO, Visakhapatnam vide assessment order dated 27.03.2001 for the assessment year 2000-01.

The petitioner, a registered dealer on the rolls of the Commercial Tax Officer, Dwarakanagar Circle, carried on business in cashew nuts during the year 2000-01. A final assessment order was passed by the assessing authority forfeiting Rs.3,42,000/- under Section 30-C of the Act. Before the Tribunal, the petitioner contended that the assessing authority had erroneously forfeited Rs.3,42,000/- under Section 30-C of the Act on the ground that the petitioner had collected tax in contravention of the provisions of Section 30-B of the Act; the transaction was an agency transaction, and not one of sale; Section 30-B and 30-C were applicable only when the amount was collected towards tax against a transaction of sale or purchase; the non-resident principal whom the petitioner represented, and in whose favour the goods were transferred, had a principal-agent relationship with the petitioner; the petitioner had purchased the goods on behalf of these non-resident principals; the department had insisted on payment of tax as a pre-condition for issuance of way-bills, and the petitioner was therefore constrained to pay tax on the transaction; for accounting purposes the expenses incurred, on behalf of the non-resident principal by the petitioner, were referred to in the purchase patties; and this could not be considered as collection of tax contrary to the provisions of the Act.

In the order under revision, the Tribunal observed that the petitioner had admitted the sale patties, which they had prepared for non-resident principals, wherein the basic price of the goods purchased, commission and other ancillary expenses including sales tax were referred to; the petitioner had also admitted that they had recovered the same from their non-resident principals; as tax had been paid to the department, and had been recovered by the petitioner from their non-resident principals, the principle of undue enrichment, as held in **M/s. Oil & Natural Gas Commission, K.G.Project, Dowlaiswaram v. State of Andhra Pradesh**[1], was attracted; and subsequent omission of Section 30-B and 30-C, with effect from 30.03.1989, would not result in the liability incurred by the assessee, before the provision was deleted, from being enforced. The Tribunal also relied on Section 8 of the A.P. General Clauses Act which is similar to Section 6 of the General Clauses Act.

Before us Sri A.K.Jaiswal, learned counsel for the petitioner, would contend that the order of the Tribunal necessitates being set aside; as the petitioner had paid tax to the department for obtaining way-bills they had collected tax from their non-resident principals; as transfer of goods by an agent to the principal does not constitute a sale, no tax could have been levied on them by the assessing authority; the tax paid, solely for the purpose of obtaining way-bills, was required to be refunded to the petitioner; and as the assessment period relates to the year 2000-01, long after Section 30-B and 30-C were omitted from the statute with effect from 30.03.1989, the Tribunal had erred in denying refund to the petitioner relying on Section 30-B and 30-C of the Act.

The remedy of a revision, under Section 22(1) of the Act, is available to a dealer only on a question of law, and the Tribunal is the final Court of fact. As has been noted by the Tribunal, in the order under revision, the petitioner had not only paid tax on the transaction but had also collected the same from persons whom they claim are their non-resident principals. The question whether the petitioner had voluntarily paid tax on the transaction or had paid it only for the purpose of obtaining way-bills is a pure question of fact which cannot be examined in revision proceedings under Section 22(1) of the Act. We must, therefore, express our inability to agree with Sri A.K.Jaiswal, learned counsel for the petitioner, that this question necessitates examination in the present revision proceedings. While it is no doubt true that Section 30-B and 30-C of the Act were omitted from the statute with effect from 30.03.1989, prior to the relevant assessment year i.e 2000-01, the fact remains that the doctrine of unjust enrichment would, in any event, apply and, as the petitioner had collected tax from persons to whom goods were transferred which tax they had earlier paid to the department, the doctrine of unjust enrichment could preclude the tax paid by the petitioner being refunded to them (**Mafatlal Industries v. Union of India**[2]). No question of law arises for consideration in this revision necessitating interference under Section 22(1) of the Act.

The revision fails and is, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

7th June 2016
RRB

[1] 16 APSTJ 47

[2] (1997) 5 SCC 536