THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Writ Petition Nos.3132 and 7410 of 2008

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

W.P.No.3132 of 2008 is filed questioning the action of the 1st respondent in issuing the impugned notice dated 04.02.2008 demanding payment of the tax, availed by the petitioner under deferment in terms of the eligibility certificate issued by the 2nd respondent during the assessment years 2005-06 and 2007-08, on the ground of adjustment of entire deferment amount towards the disputed tax for the assessment year 2004-05 under the Central Sales Tax Act, 1956 (for short "the CST Act"), as being contrary to the orders passed by this Court on 22.01.2008, and as illegal and arbitrary.

W.P. No.7410 of 2008 is filed questioning the action of the 2nd respondent in rejecting the appeal filed by the petitioner, by the impugned order dated 27.03.2008, on the ground of non-deposit of 12.5% of the disputed tax, inspite of the fact that the 1st respondent had adjusted the entire deferment amount towards the disputed tax for the assessment year 2004-05 under the CST Act which amounts to deemed payment as per G.O.Ms.No.187 dated 21.11.1995, as being arbitrary and illegal.

The petitioner is a public limited company carrying on business in the manufacture and sale of motor vehicles. A final eligibility certificate was issued in their favour granting them sales tax deferment of Rs.64,22,67,630/-. W.P. No.814 of 2008, filed by the petitioner questioning the assessment order passed by the 1st respondent for the assessment year 2004-05 under the CST Act, was disposed of directing stay of recovery of the disputed tax on condition that the petitioner deposited 25% of the disputed tax within a period of six weeks from the date of the order, and liberty was granted to the petitioner to prefer an appeal, against the assessment order, to the Appellate Deputy Commissioner.

Even prior thereto the petitioner had filed an application on 17.01.2008, under Rule 50 of the Andhra Pradesh General Sales Tax Rules, 1957 (for short "the APGST Rules"), seeking rectification of the assessment order, passed for the assessment year 2004-05 under the CST Act, on 27.12.2007. As against the tax due of Rs.90,42,94,780/-, in terms of the assessment order dated 27.12.2007 for the assessment year 2004-05, the tax allegedly paid by the petitioner for Rs.70,46,797/- was adjusted, and the balance tax due was determined as Rs.89,72,47,982/-. In their application dated 17.01.2008, filed under Rule 50 of the APGST Rules, 1957, the petitioner had requested the assessing authority to give them credit for the deferment amount of Rs.54,87,63,166/-. Accordingly the assessing authority, in the revised assessment order dated 21.01.2008, adjusted the deferment amount of Rs.54,87,63,166/-, as requested by the petitioner themselves in their application dated 17.01.2008, and determined the net balance tax due as Rs.34,84,84,817/-. Consequently, the petitioner was called upon to pay the net balance tax of Rs.34,84,84,817/-.

The petitioner claims to have received a copy of the revised assessment order dated 21.01.2008 only on 23.01.2008 i.e a day after W.P.No.814 of 2008 was disposed of by the order of this Court dated 22.01.2008. Aggrieved by the assessment order dated 27.12.2007, for the assessment year 2004-05, the petitioner preferred an appeal to the Appellate Deputy Commissioner on 28.01.2008. In their letter dated 29.01.2008, (submitted to the assessing authority more than six days after they had admittedly received a copy of the revised assessment order dated 21.01.2008 on 23.01.2008, and a day after they had preferred the appeal to the Appellate Deputy Commissioner on 28.01.2008), not only did the petitioner thank the assessing authority for having passed the revised assessment order dated 21.01.2008, but they also acknowledged the fact that they had made an application on 17.01.2008 requesting adjustment of the deferment amount of Rs.54,87,63,166/- towards the tax demanded for the assessment year 2004-05. By his order dated 27.03.2008, the Appellate Deputy

Commissioner rejected the appeal, preferred by the petitioner on 28.01.2008, as not maintainable on the ground that the petitioner had failed to produce proof of payment of 12.5% of the disputed tax which, under the second proviso to Section 19(1) of the APGST Act, was a pre-condition for the appeal to be entertained. Aggrieved thereby, the petitioner filed W.P.No.7410 of 2008 before this Court.

The controversy, in these two writ petitions, primarily revolves around adjustment of the deferment amount of Rs.54,87,63,166/- towards the tax due, for the assessment year 2004-05, of Rs.90,42,94,780/-. It is the petitioner's case, in the Writ Petitions filed before this Court, that the revised assessment order dated 21.01.2008 was ante-dated, (which they claim is evident from the fact that a copy thereof was served on them only on 23.01.2008), only to circumvent the order passed by this Court in W.P.No.814 of 2008 dated 22.01.2008.

Rule 50(1) of the APGST Rules, 1957 stipulated that any assessing, appellate or revising authority may, at any time within four years from the date of any order passed by him, rectify any clerical or arithmetical mistake apparent from the record. It is only because the petitioner had requested, in their application dated 17.01.2008 filed under Rule 50(1) of the APGST Rules, that the deferment amount of Rs.54,87,63,166/- be adjusted towards the tax due for the assessment year 2004-05 of Rs.89,63,96,409/-, was the revised assessment order dated 21.01.2008 passed granting them the benefit of adjustment of the deferment amount of Rs.54,87,63,166/- towards the tax dues for the assessment year 2004-05.

There is a dispute whether the petitioner had disclosed to this Court, in their affidavit filed in support of W.P. No.814 of 2008, of their having filed an application, under Rule 50 of the APGST Rules, on 17.01.2008 seeking adjustment of the deferment amount of Rs.54,87,63,166/-. Sri V.Bhaskar Reddy, learned counsel for the petitioner, would refer to a letter addressed by the petitioner to the Appellate Deputy Commissioner on 15.03.2008 wherein it is stated that, in paragraph 16 of the writ affidavit, the petitioner had stated that they had filed an application on 17.01.2008 before the assessing authority under Rule 50 of the APGST Rules for giving credit of the correct deferment amount. On the other hand Sri K.Vivek Reddy, learned Special Counsel appearing on behalf of the Commercial Tax Department, would refer to the averment in the counter affidavit, filed by the assessing authority in W.P.No.7410 of 2008, that the petitioner had not brought to the notice of the High Court that they had filed a letter before the 1st respondent on 17.01.2008 to adjust the entire balance amount of deferment of Rs.54,87,63,166/-.

It is wholly unnecessary for us to consider the rival submissions in this regard as it is not in dispute that, pursuant to the revised assessment order dated 21.01.2008 relating to the assessment year 2004-05, the assessing authority had issued notice dated 23.01.2008 calling upon the petitioner to remit the deferred tax amount of Rs.4,17,48,553/- for the period from November, 2005 to December, 2007. In reply thereto the petitioner, vide their letter dated 29.01.2008, not only thanked the assessing authority for rectifying the clerical mistake through their rectification order dated 21.01.2008, for the assessment made for the year 2004-05, they also stated therein that they were originally served the CST assessment order, (for the assessment year 2004-05), on 27.12.2007 raising a demand of Rs.89,63,96,409/- and, on receipt of the said assessment order, they had, through their letter dated 17.01.2008, requested the assessing authority to adjust Rs.54,87,63,166/- from the deferment amount towards the tax due. By the said letter dated 29.01.2008, the petitioner also informed the assessing authority that the latter was pleased to adjust the same through her order dated 21.01.2008 and, aggrieved by the CST assessment order, they had filed a Writ Petition before the High Court which came up for hearing on 21.01.2008 the very same day on which she had passed the rectification order, and the High Court was pleased to direct payment of 25% of the disputed tax amount only, and had directed the petitioner to prefer an appeal to the Appellate Deputy Commissioner. The petitioner further stated therein that, since 25% of the disputed tax was Rs.21,79,10,431/- and Rs.54.87 crores had already been adjusted, a revised consequential order should be issued adjusting, tentatively, Rs.22 crores only towards deferment under the CST Act for the year 2004-05 pending disposal of the appeal; consequent on such adjustment, there would be more than Rs.24 crores still to be deferred; in the circumstances, they had a substantial amount for deferment during the period from November, 2005 to December, 2007; and, consequently, there was no necessity to pay the tax amount of Rs.4,17,48,553/- now demanded.

The plea, that the assessing authority had ante-dated the order passed under Rule 50 of the APGST Rules, is difficult to believe as the petitioner's letter dated 29.01.2008, submitted in reply to the notice issued thereafter on 23.01.2008, makes no such allegations of the rectification order having been ante-dated. On the other hand the petitioner, in the said letter dated 29.01.2008, not only thanked the assessing authority for rectifying the clerical mistake and passing the rectification order dated 21.01.2008, but also acknowledged that, pursuant to the said rectification order, they were issued notice dated 23.01.2008.

We see no reason, therefore, to accept the contention now advanced by Sri V.Bhaskar Reddy, learned counsel for the petitioner, that the revised assessment proceedings dated 21.01.2008 was antedated only to circumvent the order passed by this Court in W.P.No.814 of 2008 dated 22.01.2008. The order of this Court in W.P.No.814 of 2008 dated 22.01.2008 was passed at the stage of admission without a counter-affidavit being filed by the respondents. As noted hereinabove, W.P.No.814 of 2008 was filed questioning the assessment order dated 27.12.2007, for the assessment year 2004-05 under the C.S.T. Act, as arbitrary and illegal and, while taking note of the fact that the impugned order was an order appealable to the Appellate Deputy Commissioner and the petitioner could avail the remedy of appeal, the Division Bench granted liberty to the petitioner to prefer an appeal and granted interim stay subject to the condition that the petitioner deposited 25% of the disputed demand tax within a period of six weeks from the date of the order. This Court also observed that, on such payment, the appellate authority shall entertain the appeal and dispose of the same in accordance with law.

We find considerable force in the submission of Sri K.Vivek Reddy, Learned Special Counsel for Commercial Taxes, that the petitioner had initially sought rectification of the assessment order dated 27.12.2007, to reduce their huge tax liability of Rs.89,63,96,409/- for the assessment year 2004-05, by adjusting the deferment amount of Rs.54,87,63,166/- thereto; this was accepted by the assessing authority who, by her revised order dated 21.01.2008, had adjusted the deferment amount; this resulted in the tax payable by the petitioner, for the assessment year 2004-05, being reduced to Rs.34,84,84,817/-; after the revised assessment order was passed on 21.01.2008, the petitioner, having obtained an order from this Court in W.P.No.814 of 2008 dated 22.01.2008 to pay 25% of the disputed tax, was making all sort of allegations against the assessing authority to secure the benefit of the order of this Court, and thereby seek fresh adjustment of the deferred amount, (which had already been adjusted by the revised assessment order dated 21.01.2008), towards the tax dues for the assessment year 2004-05, towards the tax dues for the tax period November, 2005 to December, 2007.

While the revised assessment order dated 21.01.2008 relates only to adjustment of the deferred amount of Rs.54,87,63,166/- towards the tax due for the assessment year 2004-05 of Rs.89,72,47,982/-, the validity of the earlier assessment order dated 27.12.2007 was under challenge in W.P.No.814 of 2008 and, as they were relegated to the remedy of an appeal, the petitioner's remedy, to question the validity of the said assessment order, was only by way of an appeal to the Appellate Deputy Commissioner. As the petitioner's request for adjustment of deferment amount of Rs.54,87,63,166/- was acceded to, and a revised assessment order was passed consequent thereto on 21.01.2008, the balance tax due from the petitioner, pursuant to the revised assessment order dated

21.01.2008, was Rs.34,84,84,817/-. While the petitioner had no doubt disputed the entire tax liability of Rs.89,72,47,982/-, 12.5% of the disputed tax, payable for an appeal to be entertained by the Appellate Authority under Section 19(1) of the APGST Act, could not have been adjusted against the deferment amount of Rs.54,87,63,166/- as the said amount had been already adjusted, at the petitioner's request, by the revised assessment proceedings dated 21.01.2008, against the tax dues for the assessment year 2004-05. As this amount had already been adjusted, the petitioner's request, by their letter dated 29.01.2008, that the assessing authority should reduce the deferment amount from Rs.54,87,63,166/-, (already adjusted by the revised assessment proceedings dated 21.01.2008), to Rs.21,79,10,431/- was, rightly, not accepted by the assessing authority.

By his notice dated 11.03.2008, the Appellate Deputy Commissioner informed the petitioner that adjustment of deferment of tax could not be considered as deemed payment for the purpose of 12.5% of the disputed tax or 25% of the disputed tax (in terms of the order of the High Court in W.P.No.814 of 2008 dated 22.01.2008); and, unless proof of payment of 25% of the disputed tax was furnished before 18.03.2008, the appeal would be rejected. In reply thereto the petitioner, in their letter dated 15.03.2008, stated that G.O.Ms.No.187 dated 21.11.1995 was issued by the Government which referred to G.O.Ms.No.108 dated 20.05.1996; these G.Os. clearly showed that the deferred tax should be treated as deemed to have been paid; and it could not be said that the deferred amount cannot be deemed to be the payment of 12.5% of the disputed tax for an appeal to be entertained.

In his order dated 27.03.2008, the Appellate Deputy Commissioner held that the second proviso to Section 19(1) of the APGST Act clearly stipulated that an appeal, preferred by a dealer, should not be admitted by the appellate authority unless the dealer produced proof of payment of 12.5% of the disputed tax; the context in which certain provisions, required the deferred amount to be treated as deemed to have been paid, were totally different from the expression "payment" used in Section 19(1) of the APGST Act; neither the provisions of G.O.Ms.No.187, nor the mention of Government loans in Section 16-C of the APGST Act, could be applied to interpret the provisions of Section 19(1) differently, especially in the absence of any specific mention therein about such deemed payment; the statutory provisions of a taxation statute must be construed strictly; and, since Section 19(1) independently prescribed payment of 12.5% of the disputed tax as a pre-condition for admission of the appeal, the petitioner could not seek exemption from such payment on the basis of either Section 16-C of the APGST Act or G.O.Ms.No.187. On the ground that the petitioner had failed to produce proof of payment of 12.5% of the disputed tax, inspite of affording them a reasonable opportunity, the Appellate Deputy Commissioner, by his order dated 27.03.2008, rejected the appeal preferred by the petitioner against the final assessment order passed for the year 2004-05 under the CST Act.

A similar contention, regarding adjustment of sales-tax deferment towards payment of 12.5% of the disputed tax, fell for consideration in ***Swastic Oleachems Ltd, Hyderabad vs. State of Andhra Pradesh***[1], and a Division bench of this Court observed:

> ".....**Whether the petitioner can take shelter under the order of the Commissionerate of Industries in sanctioning the incentive (Sales Tax deferment)? The answer must be in the negative.** In ***Ankamma Trading Company*** this Court decided a batch of five writ petitions. One of them, being W.P.No.27885 of 2010, was also a case where the dealer therein was availing the benefit of tax deferment and for that reason did not comply with the second proviso to Section 19(1) of the APGST Act. Even the said writ petition was also dismissed by this Court observing as under:
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> > As a result it must be held that payment of the admitted tax/12.5% of the disputed beyond the period of 60 days, from the date of receipt of a copy of the order of the assessing authority, would disable the appellate authority from admitting the appeal. As in all the cases, which form part of this batch, payment of the admitted tax/12.5% of the disputed tax is beyond the aforesaid time limit, all the Writ Petitions must fail.
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> **Furthermore the petitioner, in these cases, has annexed the revised final eligibility certificate fixing eligibility for sales tax deferment issued by the Commissionerate of Industries. Clause 11(ii) thereof categorically makes the incentive subject to the condition that, *"the sales tax incentive should be utilized for the deferment of industry only and should not be utilized for any other purpose"*. Therefore, the plea of the petitioner that by reason of incentives sanctioned to them the disputed tax deemed to have been paid and, therefore, the condition that the proviso to Section 19(1) of the APGST Act stands waived is**

misconceived and cannot be accepted. The STAT has also considered this aspect and, in our considered opinion, came to correct conclusion. ….” (emphasis supplied)

Sri V.Bhaskar Reddy, learned counsel for the petitioner, would however contend that the judgment of the Division Bench, in ***Swastic Oleachems Ltd, Hyderabad***[1], did not take into consideration G.O.Ms.No.187, Industries & Commerce (IP) Department, dated 21.11.1995 whereunder the deferment amount is treated as a loan extended to the company. In the light of the judgment of the Division Bench of this Court, in ***Swastic Oleachems Ltd, Hyderabad***[1], the amount, adjusted towards incentives (sales tax deferment) granted to a dealer, cannot be treated as payment of 12.5% of the disputed tax, under the second proviso to Section 19(1) of the APGST Act, for an appeal to be entertained by the Appellate Deputy Commissioner. The facility of a deferment loan is an incentive granted to a dealer to establish an industry within the State, and cannot be equated to payment of 12.5% of the disputed tax for an appeal to be entertained by the Appellate Deputy Commissioner. In view of the law declared by the Division Bench of this Court, in ***Swastic Oleachems Ltd, Hyderabad***[1], we see no reason to fault the Appellate Deputy Commissioner in rejecting the contention that the sales tax deferment amount, already adjusted under the revised assessment order dated 21.01.2008, should be treated as pre-deposit of 12.5% of the disputed tax under the second proviso to Section 19(1) of the APGST Act.

While Sri V.Bhsakar Reddy, learned counsel for the petitioner, would contend that the judgment of the Division Bench of this Court, in ***Ankamma Trading Company vs. The Appellate Deputy Commissioner (CT), Guntur***[2]*,* (which was relied upon in **Swastic Oleachems Ltd, Hyderabad**), has been stayed by the Supreme Court, Sri K.Vivek Reddy, learned Special Counsel for Commercial Taxes, would submit that the S.L.P preferred by the dealer, against the judgment in ***Swastic Oleachems Ltd, Hyderabad***[1], was dismissed by the

Supreme Court. It is wholly unnecessary for us to dwell on this aspect, as it is settled law that stay of operation of an order of the High Court, by the Supreme Court, only means that the said order would not be operative from the date on which the order of stay is passed, and does not mean that the order, which has been stayed, has been obliterated. When a Court of appeal stays the operation of the judgment, it stays the further implementation, as between the parties, of the operative portion thereof, and thereby the ratio of the decision cannot be said to be wiped out. (**K.Venkata Reddy v. LAO**[3]; **M/s.Sree Chamundi Mopeds Ltd. v. Church of SIT Association**[4]; and **Govt. of A.P. v. N.Rami Reddy**[5]).

We, however, find considerable force in the submission of Sri V. Bhaskar Reddy, learned counsel for the petitioner, that dismissal of both these writ petitions would render the petitioner remediless, as the assessment order for the year 2004-05 cannot now be examined on its merits in any fora. We need not dwell on this aspect also, as Sri K. Vivek Reddy, learned Special Counsel for Commercial Taxes, on instructions, would fairly state that, if the petitioner were to deposit 12.5% of the disputed tax within 30 days from today, the Appellate Deputy Commissioner would entertain the appeal on its merits, and will not non-suit the petitioner on the ground of limitation.

In view of the submission now made by Sri K. Vivek Reddy, learned Special Counsel for Commercial Taxes, while W.P.No.3132 of 2008 is dismissed, W.P.No.7410 of 2008 is disposed of leaving it open to the petitioner, if they so choose, to prefer an appeal to the Appellate Deputy Commissioner after depositing 12.5% of the disputed tax within 30 days from today. If such deposit is made, within the aforesaid period, the Appellate Deputy Commissioner shall entertain the appeal and decide it on its merits. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(M. SATYANARAYANA MURTHY, J)

24th August 2016

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[1] 2012(55) APSTJ 53

[2] (2011) 53 APSTJ 1

[3] 1994 (1) ALT 227

[4] AIR 1992 SC 1439

[5] 2001 (1) ALD 443 (DB)