HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.1052 OF 2005

ORDER:

The case of the petitioner is that it is a Central Government undertaking which is involved in the business of marketing petroleum products including petrol, high speed diesel, liquidified petroleum gas, lubricants etc. For the purpose of efficient distribution of its products, the petitioner has storage depots and LPG bottling plants at various places. One such terminal of the petitioner is situated in Kadimi Pothavaram Village, Pinapaka gram panchayat. This terminal is situated in 3,20,664 Sq.Mtrs. of land and consists of electrical towers, storage tanks etc. The respondent gram panchayat had fixed property tax of Rs.1,34,445/- in the year 2002-2003. However, this was calculated on the basis of cost of structures which do not form part of any building nor can be described as building, which can be levied with property tax. Further, the cost of the land was included for calculation of property tax when the same is not permissible under the provisions of the A.P.Panchayat Raj Act, 1994. Subsequently, the respondent gram panchayat also sought to levy the property tax of Rs.1,41,167/- for the year 2003-2004. A demand notice for house tax was made on the basis of proceedings bearing ROC.No.9/2002, dated 26.03.2003 in which the cost of the building was estimated at Rs.97,67,070/- and the cost of the site was estimated at Rs.80,16,600/-. On the basis of this assessment, a demand notice bearing No.277 and demand No.56577 dated 28.03.2003 was issued. Against this notice, the petitioner had addressed a letter dated 15.04.2003 in which certain objections were raised. The respondent had rejected these objections vide its proceedings bearing Roc.No.9/2002, dated 30.04.2003. The petitioner had again represented on 10.04.2004 to the respondent to delete 27 items set out in the representation from the valuation of the property for calculating the property tax. However, the respondent, by proceedings bearing Roc.No.9/2004, dated 09.07.2004 rejected all these objections without assigning any reasons and sought payment of property tax for the year 2002-03 and 2003-04. Aggrieved by the action of the respondent in refusing to consider the objections of the petitioner and in issuing notice calling upon the petitioner to pay the property tax on structures, the petitioner filed the present writ petition.

The respondent filed counter affidavit stating that the petitioner company has established a terminal for distribution of the oil within the area of operation of the Gram Panchayat; that for the purpose of such establishment, the company has acquired some open land and applied for building permission; and that after granting permission, the buildings were assessed to property tax as per the provisions of the Panchayat Raj Act. It is a fact that for the year 2002-2003, the property tax was levied for a tune of Rs.1,34,445/- taking into consideration the plinth area which includes the cost of the construction and the conversion charges of the land use. It is false to say that the cost of the land was also taken into consideration by this respondent for levying the property tax. It is further stated that the property tax was assessed strictly following the taxation rules contemplated under the Panchayat Raj Act, 1994; and that subsequent years the tax was enhanced as per the rules and an amount of Rs.1,41,167/- was demanded. It is stated that the structures belonging to the petitioner are subject to property tax and falls within the definition of 'house' as contemplated under Sec.2(19) of the Panchayat Raj Act. Therefore, the tax was assessed as per the provisions of Section 60 and 61 of the Act. It is further stated that no vacant land tax was levied on the petitioner company as alleged.

Learned counsel for the petitioner by relying on the Judgment rendered by the Apex Court in ***Indian Oil Corporation Limited v. A.P.Industrial Infrastructures Corporation Limited and others (2016 (1) ALD 123 SC)***, submits that though storage tanks and water tanks qualify the definition of 'house' as defined under Section 2(19) of the A.P.Panchayat Raj Act, 1994, but the other items which the respondents sought to levy tax by way of impugned demand notice dated 10.04.2004 do not fall within the definition of 'house' defined under Section 2(19) of the Act. As such, the respondents are not justified in levying the tax on other items as mentioned in the impugned proceedings and when the petitioner made application for reduction of tax, the same was rejected.

Learned Standing Counsel for respondent submits that the Government framed Rules relating to certain taxes and other lodging of moneys received by the Gram Panchayat and payment of moneys from the Gram Panchayat fund under G.O.Ms.No.30, PR, RD & R., dated 20.01.1995 (*herein after called as 'the Rules')*. As per Rule-19 of the said rules appeal lies to the Gram Panchayat against the impugned proceedings. Instead of preferring the appeal, the petitioner filed the present writ petition. He also submits that when the petitioner was asked to produce the entire estimated cost of the company as per bye laws for assessment of house tax in the impugned proceedings, the petitioner could have produced the same.

In this case, as per the aforesaid Judgment ***(2016 (1) ALD 123 SC)*** relied on by the petitioner, storage tanks/water tanks were held to be warehouse and come within the definition of 'house' contained under Section 2(19) of the A.P.Panchayat Raj Act, 1994, as such, the respondent justified in imposing property tax on the tanks and to that extent the impugned order is upheld.

As far as other items are concerned, the petitioner has alternative remedy of appeal under Rule-19 of the Rules and the said factual aspects have to be verified by the appellate authority.

In view of the same, it is open for the petitioner to file appeal before the appellate authority under Rule 19 of the Rules within a period of three months from today and on such appeal the appellate authority shall consider the same and pass orders. Till then the tax imposed on the other items is stayed as the interim order granted by this Court on 31.01.2005 was operating. Meanwhile, it is open for the respondent to raise demand in respect of tanks and the petitioner shall pay the same, since the said issue is already decided by the Apex Court in ***(2016 (1) ALD 123 SC).*** If petitioner fails to file the appeal within the stipulated period, it is open for the respondent to recover the tax as per the impugned proceedings.

Accordingly, the writ petition is disposed of. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

22.06.2017
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