

(2001) 08 AP CK 0052

Andhra Pradesh High Court

Case No: Writ Petition No. 17337 of 2001

Dwaraka Pershad Radhey
Ramanlal

APPELLANT

Vs

Deputy Commissioner (CT),
Secunderabad Division

RESPONDENT

Date of Decision: Aug. 21, 2001

Acts Referred:

- Andhra Pradesh General Sales Tax Act, 1957 - Section 20

Citation: (2002) 128 STC 335

Hon'ble Judges: S.R. Nayak, J; S. Ananda Reddy, J

Bench: Division Bench

Advocate: Dantu Srinivas, for the Appellant; The Special Government Pleader for Taxes, for the Respondent

Final Decision: Dismissed

Judgement

1. This writ petition, with the consent of learned counsel for the petitioner and the learned Special Government Pleader for Taxes, was finally heard at the stage of admission itself.

2. The petitioner is a partnership firm and it is engaged in the business of executing civil contracts (works contracts) of South Central Railways and other Government departments. During the assessment year 1995-96, the petitioner executed several Government and railway works contracts and the contractees have deducted at source a sum of Rs. 2,19,597 towards sales tax from out of the bills payable by them to the petitioner. Similarly, for the assessment year 1996-97 the contractees have deducted at source an amount of Rs. 1,81,221 towards sales tax from out of the bills payable by them to the petitioner. The assessing authority passed the assessment orders dated January 8, 1998 and March 30, 1998 for the assessment years 1995-96 and 1996-97 respectively and levied tax of Rs. 1,97,915 and Rs. 87,670 respectively.

According to the petitioner-dealer, the Commercial Tax Department itself has to refund an amount of Rs. 1,25,233 to the petitioner towards the excess sales tax collected from the petitioner. It appears that on an earlier occasion, a demand notice dated June 10, 1998 was issued to the petitioner and against which the petitioner filed W.P. No. 17492 of 1998 in this Court for a direction to direct the respondents to refund the excess tax. This Court by order dated June 29, 1998 was pleased to dispose of that writ petition with a direction to refund the excess tax, if any.

3. When the matter stood thus, the Deputy Commissioner, Commercial Taxes, Secunderabad Division, the respondent herein, issued pre-revisional show cause notice in R.R. No. 434/2000-2001, dated July 28, 2000 u/s 20(2) of the Andhra Pradesh General Sales Tax Act (for short, "the APGST Act") to the petitioner-dealer proposing to revise the assessment order for the assessment year 1995-96. The petitioner submitted his written objection to the said show cause notice on September 5, 2000. However, the respondent has not yet passed final order u/s 22 on consideration of the objections filed by the petitioner. When the matter stood thus, the respondent issued the impugned revised show cause notice dated July 23, 2001 incorporating certain additional grounds to revise the assessment order for the same assessment year 1995-96. Assailing the action of the respondent in issuing the revised show cause notice dated July 23, 2001, this writ petition is presented.

4. The learned counsel for the petitioner would first contend that though the notice dated July 23, 2001 is styled as revised show cause notice purported to be u/s 20 of the APGST Act, actually, the respondent has pre-determined the merits of the matter and therefore it tantamounts to adjudication of the dispute and a final order made u/s 20 of the Act. Secondly, the learned counsel would contend that under no circumstance the respondent-revising authority can amend or revise the earlier show cause notice dated July 28, 2000 because such a power is not granted to him under the provisions of the APGST Act or the Rules framed thereunder.

5. At this stage, we do not find any necessity to express our opinion on the first contention of the learned counsel for the petitioner. Suffice it to state that if in the opinion of the petitioner-dealer, impugned revised show cause notice dated July 23, 2001 tantamounts to an adjudication order made by the respondent in exercise of the revisional power conferred upon him u/s 20 of the Act, the petitioner-dealer can avail appeal remedy before the STAT. If we go by the above say of the petitioner, we do not find any extraordinary situation or circumstance which would persuade us to permit the petitioner to straightaway approach this Court under Article 226 of the Constitution without exhausting the alternative comprehensive appeal and other remedies provided under the APGST Act. However, we make it very clear that it is not our opinion that the impugned show cause notice tantamounts to an adjudication order and we are only stating the contention of the counsel for the petitioner.

6. We do not find any merit in the second contention of the learned counsel for the petitioner. We pointedly asked the learned counsel for the petitioner to trace any limitation imposed on the respondent-revising authority that he cannot, under any circumstance, amend or revise the show cause notice. The learned counsel was not in a position to trace such embargo or limitation placed on the Deputy Commissioner (CT) with reference to any provision of the APGST Act or the Rules made thereunder. It is not that in pursuance of the earlier show cause notice dated July 28, 2000 and on consideration of the objections filed by the petitioner to that show cause notice, the respondent had passed a final order u/s 20 and subsequently he has issued the impugned revised show cause notice. The respondent has not yet made any order on merits after receipt of the objections from the petitioner to the earlier show cause notice. If that is the admitted position, it cannot be said that the respondent lacks jurisdiction or power to amend the show cause notice raising additional grounds for the proposed revision of the assessment order for the assessment year 1995-96. The power to raise additional grounds for the proposed revision u/s 20 of the APGST Act is an incidental power of the respondent under that section. Therefore, the second contention of the learned counsel for the petitioner is not acceptable to us. In our considered opinion, the impugned action of the respondent is in consonance with the principles of natural justice and fair play in action. The affected should be apprised is the constitutional creed flowing from Article 14 of the Constitution and therefore the first respondent having proposed to revise the assessment order for the assessment year 1995-96 u/s 20 of the Act, not only on the grounds already stated by him in the show cause notice dated July 28, 2000 but also on certain additional grounds stated in the impugned revised show cause notice, quite fairly, issued the impugned show cause notice to apprise the petitioner-dealer about the additional grounds. Therefore, no exception can be taken to the impugned show cause notice. It does not violate principles of natural justice. On the other hand, it aids and conforms to the requirement of principles of natural justice. It is permissible for the petitioner to file additional reply or statement of objections as regards the additional grounds stated by the respondent in the impugned show cause notice.

7. In the result and for the foregoing reasons, we dismiss the writ petition. No order as to costs.

8. The learned counsel for the petitioner prays the court to grant some reasonable time to file additional reply to the impugned show cause notice dated July 23, 2001. Fifteen days time is granted to the petitioner to file additional reply.