
Mukunda Dairy Products Pvt. Ltd. Vs Commercial Tax Officer and Another

Writ Petition No. 12889 of 2005

Court: Andhra Pradesh High Court

Date of Decision: Aug. 8, 2005

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 " Section 19, 19(1), 21(2)#Constitution of India, 1950 " Article 226

Citation: (2006) 144 STC 177

Hon'ble Judges: Ramesh Ranganathan, J; B. Sudershan Reddy, J

Bench: Division Bench

Advocate: Bhaskar Reddy Vemireddy, for the Appellant; A.V. Krishna Kowndinya, Special Standing Counsel for respondent No. 1 and Government Pleader, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

B. Sudershan Reddy, J.

The petitioner is a private limited company carrying on business in purchase and sale of milk and milk products. It

was provisionally assessed for the assessment year 2003-04 under the provisions of the Andhra Pradesh General Sales Tax Act, 1957 (for short,

the Act") by the first respondent vide order dated August 20, 2004 levying tax on the disputed turnover of Rs. 5,92,52,237 for the said

assessment year 2003-04. The assessing authority rejected the claim of the petitioner that the entire turnover is exempted from the tax in view of

G.O. Ms. No. 1091 dated June 10, 1957 and accordingly levied the tax on the disputed turnover, which inter alia, includes the sale turnover of

cream and SNF (solid not containing fat).

2. The petitioner preferred an appeal u/s 19 of the Act before the second respondent challenging the order of the assessment dated August 20,

2004. That at the time of filing of the appeal, the petitioner, as is required under the second proviso to Sub-section (1) of Section 19 of the Act,

has deposited an amount of Rs. 7,01,282 being 12.5 per cent of the disputed tax for maintaining the appeal.

3. The appellate authority having considered the appeal on merits allowed the same and accordingly held that the cream produced and marketed

by the petitioner through the process called ""churning"" is eligible for exemption as claimed by it. The order of the assessing authority was

accordingly set aside.

4. The petitioner thereafter filed repeated representations including the representation dated February 2, 2005 requesting the Commercial Tax

Officer to refund the amount of Rs. 7,01,282 deposited by them at the time of filing of the appeal. The request, obviously, has been made in terms

of the third proviso to Section 21(2) of the Act. It is also brought to our notice that the petitioner made a representation to the Commercial Tax

Officer requesting at least to adjust the amount refundable towards the value added tax to which also there has been no response. It is under those

circumstances, the petitioner invoking the extraordinary jurisdiction of this Court under article 226 of the Constitution of India has filed this writ

petition on June 16, 2005 with a prayer to declare the action of the first respondent in not refunding the amount of Rs. 7,01,282 is illegal, arbitrary

and without any authority of law and contrary to the last proviso to Section 21(2) of the Act. The petitioner accordingly prays for issuance of

consequential directions directing the respondents to refund the amount of Rs. 7,01,282 together with interest at 18 per cent.

5. This Court vide its order dated June 17, 2005 required the respondents to file counter within two weeks. The matter came up for consideration

on July 1, 2005 and was again adjourned at the request of the learned Standing Counsel for the department and again was taken up on July 8,

2005 on which date the court made an observation that it is eminently a fit case where the department is required to refund the amount. Nothing

happened thereafter. The matter came up for consideration before us on August 3, 2005 on which date we have also expressed our opinion that it

is a fit case where the department should refund the amounts and preferably by handing over either demand draft or cheque for the said amount in

the court itself to the learned counsel for the petitioner. Even today, the said amounts are not refunded.

6. However, in the counter-affidavit filed by the Deputy Commercial Tax Officer, Narasaraopet, it is, inter alia, averred that the Additional

Commissioner (CT)(Legal) issued show cause notice dated July 16, 2005 proposing to set aside the appellate orders of the second respondent

herein. This show cause notice was served on the petitioner on July 19, 2005. It is not difficult to visualize that the law was set in motion against the

petitioner herein after the matter underwent three adjournments at the request of the department. The conduct of the department speaks for itself.

We are constrained to observe that the department has made an attempt to over reach the orders that were likely to be passed in this writ petition.

Neither the plea nor the conduct of the department is appreciated.

7. Be that as it may. There is no provision under the Act which enables the authorities to withhold refund of the amount merely because a show

cause notice is issued proposing to revise the appellate order. We fail to appreciate as to how the department could sit over the matter and refuse

to refund the amount to the petitioner to which it is lawfully entitled to in law. We are not able to appreciate the averments made in the counter-

affidavit, which are in the nature of grounds attacking the order passed by the appellate authority. There is no answer forthcoming from the

department as to how they could refuse to refund the amounts to the petitioner as is required u/s 21(2) of the Act. The high handed and arbitrary

action of the respondents is required to be deprecated and we accordingly do so.

8. For the aforesaid reasons, this writ petition is allowed as prayed for. There shall be a direction to the respondents to forthwith refund the amount

of Rs. 7,01,282 deposited by the petitioner for the assessment year 2003-04 at the time of preferring the appeal before the second respondent

within a period of one week from the date of receipt of a copy of this order. The petitioner is entitled to payment of interest at the rate of 18 per

cent on the said amount. The order shall be complied with and it is made clear that under no circumstances, will further extension be granted to the

department for refunding the amounts.

The petitioner is entitled to costs quantified at Rs. 5,000.