
(2014) 07 AP CK 0084

Andhra Pradesh High Court

Case No: Writ Petition No. 7666 of 2014

Neeraj Kumar Vishal Kumar

APPELLANT

Vs

Deputy Commercial Tax Officer

RESPONDENT

Date of Decision: July 7, 2014

Acts Referred:

- Andhra Pradesh Value Added Tax Act, 2005 - Section 45(7)(a), 45(7)(b), 46(1)

Citation: (2014) 59 APSTJ 1

Hon'ble Judges: R. Subhash Reddy, J; A. Shankar Narayana, J

Bench: Division Bench

Advocate: Harija Akkineni, Advocate for the Appellant; Dantu Srinivas, Special Standing Counsel, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

R. Subhash Reddy, J.

Heard learned counsel for the petitioner and the learned Government Pleader for Commercial Taxes appearing for the respondents. The petitioner, a proprietorship firm registered in New Delhi, is involved in the business of supply and distribution of food grains. It is the case of the petitioner that it has business dealings with M/s. K.L. Enterprises, having its office at Shop Nos. 3 & 4 bearing Door No. 27-20-24 at Vijayawada. It is also the case of the petitioner that in view of the purchase orders placed by M/s. K.L. Enterprises for supply of Basmati Rice, it has sent seven containers of the said Rice to M/s. Container Corporation of India Limited, Nagulapally, through which the containers were to be transported via road to the consignee i.e., M/s. K.L. Enterprises. The consignee made payment for one container and got released the same on 02.04.2013 and subsequently one more container was got released by making payment. It is stated that subsequently as the consignee refused to accept the goods, the petitioner rebooked the goods back to New Delhi, and as such, no sale transaction has taken place between the petitioner and M/s.

K.L. Enterprises. While so, on 04.05.2013, the Deputy Commercial Tax Officer of Zaheerabad Unit, the 1st respondent herein, visited M/s. Container Corporation of India located at Nagulapally of Sanga Reddy and, on noticing that seven containers of rice belonging to the petitioner are to be transported from Nagulapally Railway Station to Tuglakabad Terminal, Delhi without any documents, issued notice in Form 610 on the same day, detaining the goods. Subsequently, the 1st respondent issued proceedings in JII/CV/2013-14, dated 01.06.2013, whereby the detained goods were seized under Sections 45(7)(b) and 46(1) & (2) of the A.P. Value Added Tax Act, 2005 (for short "the A.P. VAT Act"). Aggrieved thereby, the petitioner filed an appeal before the Appellate Deputy Commissioner (CT), Secunderabad Division, who vide order dated 11.07.2013, dismissed the appeal. Questioning the same, the petitioner further preferred an appeal in T.A. No. 183/2013 along with a miscellaneous petition in T.M.P. No. 217 of 2013 before the Andhra Pradesh Sales Tax and VAT Appellate Tribunal, Hyderabad (for short "the Tribunal"), for release of seized goods. The Tribunal, vide order dated 11.09.2013, allowed T.M.P. No. 217 of 2013 directing the 1st respondent to release the seized goods on condition of the petitioner furnishing a bank guarantee in a sum of Rs. 22,08,696/- covering the tax and penalty components and an indemnity bond for Rs. 1,47,24,641/-. However, during pendency of the appeal before the Tribunal, the 1st respondent issued an order of Assessment of Value Added Tax, dated 22.07.2013, demanding the petitioner to pay tax of Rs. 7,36,236/-. Thereafter, the 1st respondent also issued order, dated 23.08.2013, demanding the petitioner to pay penalty of Rs. 14,72,464/-. Subsequently, the 1st respondent issued another notice, dated 30.12.2013, demanding the petitioner to pay the tax and penalty amount within 7 days from the date of receipt of notice, failing which the bank guarantee furnished by the petitioner was sought to be encashed by the department.

2. Learned counsel for the petitioner submitted that as the consignee refused to accept the subject goods sent by the petitioner, the petitioner rebooked the same back to New Delhi, and as such, no sale transaction has taken place between the petitioner and the consignee and the question of payment of tax and penalty on such goods does not arise. He further submitted that even assuming without admitting that there is sale transaction, the same has to be treated as taken place in New Delhi, which is having the exemption of VAT, for sale of Rice, as per the provisions of Delhi VAT Act, and that the same being an inter-state sale transaction, the provisions of Central Sales Tax Act would attract and the provisions of A.P. VAT Act are not applicable. Learned counsel also submitted that referring to the proceedings of seizure of goods and also the notice of confiscation of goods issued earlier, the impugned orders are passed without issuing prior notice and without providing an opportunity of personal hearing to the petitioner. Learned counsel further submitted that the orders under challenge are passed contrary to the provisions of Section 45(7)(a) of the A.P. VAT Act.

3. Today in the forenoon session, when the matter has come up for hearing, learned Government Pleader for Commercial Taxes was asked to get instructions whether any prior notice was issued to the petitioner before passing the impugned order dated 22.07.2013. In the afternoon session, learned Government Pleader has produced the file relating to the assessment proceedings. He has stated that before passing the assessment order, a notice of personal hearing was issued by the 1st respondent to the petitioner and its authorized representative on 20.07.2013. We have perused the said notice, dated 20.07.2013, which is produced by the learned Government Pleader. From a perusal of the said notice, it is evident that the same was issued to the petitioner and its authorized representative, providing an opportunity of personal hearing to them against the proposed confiscation of goods, but not against the imposition of tax.

4. Section 45(7)(a) of the Andhra Pradesh Value Added Tax Act, 2005 reads as under:

"Where goods are carried without paying tax, if any, payable or goods are carried without being properly accounted for in the documents referred to in clause (b) of sub-section (2), the said officer shall collect the tax payable on the goods so carried and in addition levy a penalty not exceeding two times the amount of tax payable on such goods after giving a reasonable opportunity to the person likely to be effected, against the proposed penalty".

5. A perusal of the impugned order of Assessment of Value Added Tax, dated 22.07.2013, does not disclose either issuance of prior notice to the petitioner calling for his objections or a notice providing him an opportunity of personal hearing. It is the case of the petitioner that the question of payment of tax and penalty under the provisions of A.P. VAT Act does not arise at all, as no sale has taken place within the territory of Andhra Pradesh. On the other hand, it is submitted by the learned Government Pleader that as the delivery of goods has taken place in the State of Andhra Pradesh and payment was made only after delivery of goods, it amounts to sale within the territory of Andhra Pradesh, and as such, the provisions of A.P. VAT Act attract. The question as to whether the sale has taken place within the state of Andhra Pradesh or not, is to be considered after issuing notice to the petitioner calling for his objections. As per the provision under Section 45(7)(a) of the A.P. VAT Act, a prior notice has to be given to the petitioner before passing the order of Assessment of Value Added Tax, but, admittedly, the petitioner was not given prior notice before passing the impugned order dated 22.07.2013.

6. In that view of the matter, without going into merits of the claim of petitioner, we set aside the impugned orders dated 22.07.2013 and 30.07.2013 and also the consequential notice dated 30.12.2013 issued by the 1st respondent. It is made clear that the respondents are at liberty to issue fresh notice to the petitioner's address as shown in the writ petition and, on receipt of such notice, the petitioner shall file his objections thereto, without seeking further time, and thereafter, the respondents shall take appropriate action, as expeditiously as possible.

7. Accordingly, the Writ Petition is allowed to the extent indicated above. No order as to costs. Miscellaneous Petitions, if any, pending in this writ petition shall stand closed.