

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH:
HYDERABAD
(Special Original Jurisdiction)

WEDNESDAY, THE THIRTIETH DAY OF SEPTEMBER
TWO THOUSAND AND NINE

PRESENT:

THE HON'BLE SRI JUSTICE GHULAM MOHAMMED

AND

THE HON'BLE SRI JUSTICE G. BHAVANI PRASAD

WRIT PETITION No.20280 OF 2009

BETWEEN:

M/s. Parle Agro Pvt. Ltd.,
Rep. by its Manager (Legal & Taxation)
S.K. Basha.

.... Petitioner

AND

The Joint Commissioner (CT) Legal,
Nampally, Hyderabad and Others

.... Respondents

THE HON'BLE SRI JUSTICE GHULAM MOHAMMED

AND

THE HON'BLE SRI JUSTICE G. BHAVANI PRASAD

WRIT PETITION No.20280 OF 2009

ORDER: (per the Hon'ble Sri Justice Ghulam Mohammed)

This Writ Petition is filed for a writ of *Mandamus* to declare the order dated 11-09-2009 passed by respondent No.1 in CCT's.

Ref. No.L.V(1)/506/2009 i.e. for the year 2008-2009, as illegal and arbitrary and consequently set aside the same.

2. The case of the petitioner, in brief, is that the petitioner is a registered dealer, vide TIN No.28204468816 on the rolls of respondent No.5 and also registered under Central Sales Tax Act, 1956. The petitioner is the manufacturer of fruit drinks. The Assistant Commissioner (CT) – respondent No.5 has proposed an assessment on the petitioner to charge tax at the rate of 12.5 % for 2007-08 treating the above goods as aerated fruit drinks and the petitioner has objected the same stating that the said products have been certified as fruit drinks by the Food Product Order dated 28-03-2005 issued by the competent authority. It is also stated by the petitioner that the Hon'ble CESTAT, Delhi Bench by its order dated 01-04-2008 held that the products manufactured by the petitioner cannot be called as aerated products and the appeal preferred by the Central Excise Department was dismissed by the Apex Court by an order dated 08-07-2009.

Accordingly, respondent No.5 by an order dated 23-10-2007 had dropped the proceedings thereby accepting the classification as adopted by the petitioner and upheld the rate of tax at 4%. While so, The Commercial Tax Officer (Intl.) - respondent No.2, who is the lower than the rank of respondent No.5 on the authorization said to have been given by respondent No.4 had issued a show cause notice dated 04-05-2009 to the petitioner proposing to levy tax at the rate of 12.5% for the tax periods from 01-04-2008 to 31-03-2009. The petitioner submitted a detailed reply, stated that the said products are liable to tax at 4% as they are treated as fruit drinks and in support of his

contention he relied on the certification made by the competent authority. But, respondent No.2 without properly appreciating the submissions made by the petitioner passed an order dated 19-06-2009 levying tax at 12.5%.

Aggrieved of the same, the petitioner preferred an appeal, along with the stay petition seeking stay of collection of disputed tax and interest, before the Appellate Deputy Commissioner (CT) – respondent No.3. However, respondent No.3 rejected the stay petition of the petitioner by an order dated 31-08-2009. Aggrieved thereby, the petitioner filed a revision stay petition before the Joint Commissioner (CT) – respondent No.1 for stay of collection of the disputed tax and interest, pending disposal of the appeal before respondent No.3. But, unfortunately respondent No.1, without proper appreciation of the submissions made by the petitioner, passed the impugned order rejecting the stay petition of the petitioner. He further submitted that respondent authorities are pressing the petitioner to pay the disputed tax and interest otherwise coercive steps would be initiated. Against the said order dated 11-09-2009, the present writ petition is filed.

3. Learned counsel appearing for the petitioner submitted that though the petitioner paid 12.5% of the disputed tax and the appeal is pending before respondent No.3, the authorities are going to take coercive steps during the pendency of the appeal, which is not sustainable under law.

4. Heard the learned counsel on either side and perused the record.

5. It is seen that the petitioner filed the appeal along with stay petition before respondent No.3 and the stay petition was dismissed

and the appeal is pending.

6. In the circumstances, we deem it appropriate to direct the petitioner to deposit 75% of the disputed tax amount of Rs.76,84,298/- and the disputed interest of Rs.5,57,347/- within a period of six (6) weeks from today after giving credit to the amount already paid. In the meanwhile, the authority concerned, shall not take any coercive steps till the appeal is disposed of. It is further made clear that the appellate authority shall dispose of the appeal as expeditiously as possible as per law. It is further made clear that this Court has not expressed any opinion on the merits of the case. This order shall remain in operation during the pendency of the appeal.

7. With the above direction, the Writ Petition is disposed of. There shall be no order as to costs.

GHULAM MOHAMMED, J

G. BHAVANI PRASAD, J

September 30, 2009.
KTL