

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TAX REVISION CASE No.144 of 2001

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

This revision, under Section 22 (1) of the Andhra Pradesh General Sales Tax Act, 1957 (for brevity, 'the Act'), is preferred against the order of the Sales Tax Appellate Tribunal in T.A.No.891 of 1996 dated 16.11.2000.

The petitioner herein was held disentitled for refund of excess tax of Rs.16,48,138/- . The assessing authority, relying on the judgments of the Supreme Court in **Builders Association of India V. Union of India and others**^[1] and **Metallurgical & Engineering Consultants (India) Limited, Visakhapatnam v. State of Andhra Pradesh**^[2], exempted a turnover of Rs.2,82,08,503/-; and, as a result, the petitioner was eligible for refund of tax of Rs.16,48,138/- . Later the assessing authority, on noticing that the appellant had collected tax from their customers, invoked Section 33-BB of the Act. The appeal preferred thereagainst was disallowed by the Appellate Deputy Commissioner and, aggrieved thereby, the petitioner invoked the jurisdiction of the Sales Tax Appellate Tribunal.

In the order under revision, the Tribunal held that the action of the assessing authority, in not giving refund under Section 33-BB of the Act, was justified as indicated in the

assessment order; the facts of the case would not attract the provisions of Section 30-C of the Act which deals with forfeiture; and, accordingly, the point was answered in favour of the revenue and against the petitioner.

Before us, Sri Vedula Srinivas, learned counsel for the petitioner, would submit that the order of the assessing authority, in refusing the petitioner refund of tax under Section 33-BB of the Act, is illegal; the said provision has no application to the case on hand; and the petitioner has specifically stated, in the grounds of revision, that, as they were prepared to pass on the refund to their customers who were very few in number and were identifiable, Section 33-BB of the Act cannot be invoked.

On the other hand, Sri P.Balaji Varma, learned Special Standing Counsel for Commercial Taxes, would submit that the order of the assessing authority, in refusing refund, does not necessitate interference; the petitioner has collected tax from their customers; and, permitting the said amount to be refunded, would result in the petitioner being unduly enriched.

Section 33-BB of the Act stipulates that, where levy and collection of tax is held invalid by any judgment or order of a Court or Tribunal, it shall not be necessary to refund any such tax to the dealer unless it is proved by the dealer, to the satisfaction of the assessing authority, that the tax has not been collected from the purchaser. While, in the present case, the petitioner has collected tax from their customers,

their claim for refund is not as a consequence of the levy and collection of tax being held invalid by any judgment or order of a Court or Tribunal. Section 33-BB of the Act has, therefore, no application. The petitioner's entitlement for refund is under

Section 33 of the Act which requires the assessing authority to refund the tax, if any, paid by the assessee if it is found to be in excess of the tax payable by him for the said period.

While the orders of the Appellate Deputy Commissioner and the Sales Tax Tribunal, in upholding the action of the assessing authority in refusing refund under Section 33-BB of the Act, is illegal, the question which necessitates examination is whether the petitioner should be given the benefit of refund when, admittedly, they have collected tax from their customers, for refund of the amount, which the petitioner has already collected from their customers, would result in their unjust enrichment.

In Mafatlal Industries Limited and others v. Union of

India and others^[3] the Supreme Court held that a claim for refund can succeed only if the petitioner alleges and establishes that he has not passed on the tax burden to another; his refund claim can be allowed only when he establishes that he has not passed on the tax burden or to the extent he has not so passed, as the case may be; the claim for refund is neither an absolute right nor an unconditional obligation but is subject to the said requirement; where the burden of the tax has been passed

on, the claimant cannot contend that he has suffered any real loss or prejudice; the real loss or prejudice is suffered, in such a case, by the person who has ultimately borne the burden; it is only that person who can legitimately claim its refund; where such person does not come forward, or where it is not possible to refund the amount to him for one or the other reason, it is just and appropriate that that amount is retained by the State i.e. by the people; the doctrine of unjust enrichment is a just and salutary doctrine; no person can seek to collect tax from both ends; he cannot collect tax from his purchaser at one end and also collect the same from the State on the ground that it has been collected from him contrary to law; the power of the Court is not meant to be exercised for unjustly enriching a person; the doctrine of unjust enrichment is not applicable to the State, as the State represents the people of the country; and no one can speak of the people being unjustly enriched.

While the refund sought by the petitioner, represents the amount collected by them as sales tax from their customers, Sri Vedula Srinivas, learned counsel for the petitioner, would contend that such customers are identifiable, and the petitioner can refund the amount so collected to them. It is not in dispute that persons, who had paid the tax to the petitioner, have not approached the Court. The question which would then arise for consideration is whether the petitioner should now be permitted to identify such customers, and the State be directed to make refund to them. The order under revision, confirming the order of the

assessing authority, is only on the ground that the petitioner is disentitled to refund under Section 33-BB of the Act. As we have held that Section 33-BB of the Act has no application, we set aside the order of the assessing authority and remand the matter back for his consideration afresh as to whether the petitioner is entitled for refund of tax collected by them on the application of the doctrine of unjust enrichment as enunciated by the Supreme Court in **Mafatlal Industries Limited and others**¹.

The TRC is, accordingly, disposed of. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

28th August, 2014.

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[1] (1989) 73 STC 370

[2] (1993) 16 APSTJ 85

[3] (1997) 5 Supreme Court Cases 536