

CASE NO.:
Appeal (civil) 4912 of 2006

PETITIONER:
M/s Supra Marketing Agencies

RESPONDENT:
Commercial Tax Officer, Hyderabad and Ors

DATE OF JUDGMENT: 13/11/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) Nos. 2381-2382 of 2006)

ARIJIT PASAYAT, J

Leave granted.

The controversy in the present appeal lies within a narrow compass. The appellant is a dealer registered under the provisions of Andhra Pradesh General Sales Tax Act, 1957 (in short the 'Act') and the Central Sales Tax Act, 1956 (in short the 'CST Act'). The present disputes relates to the assessment years 1998-1999 and 1999-2000. The State Government in the Commercial Tax Department issued a letter to the Andhra Pradesh Backward Classes Cooperative Finance Corporation Limited (in short 'Corporation') directing that taxes are to be deducted at a source on the payments made by it to the appellant. It was stipulated that the amounts so deducted at source are to be deposited with the Commercial Tax Department. The Corporation directed to its Executive Director to credit sales tax deducted at source by Account Payee cheque in favour of the concerned Assessing Officer in terms of discussion held at a meeting held on 27.03.1999 where the Managing Director of the Corporation and the Commissioner of Commercial Taxes were present. The Corporation had floated a project known as Adarna for the purpose of ameliorating the conditions of poor backward class artisans. The Corporation had taken a decision to procure number of articles used by artisans. An agreement was entered into between the appellant and the Corporation for supply of milk cans, insulating boxes etc. Undisputedly, certain amounts had been deducted at source in respect of sales tax payable. The appellant brought it to the notice of the Corporation that by letter dated 7.7.1999 in view of the Circular issued by the Commissioner of Commercial Tax (in short the 'Commissioner') in terms Section 42-A of the Act, it was the responsibility of the Corporation to discharge the sales tax liability under the Act and CST Act. A Circular had been issued by the Commissioner directing all the Deputy Commissioners to implement the instructions issued in respect of payments made in the Adarna scheme. The Corporation in terms of Circular had deposited Rs.5,50,089/- which is a part of the amount deducted at source. The balance amount undisputedly is Rs.10,44,396/-. The Sales Tax Authorities wanted to recover the said amount from the appellant. Placing reliance on the Circular issued by the Deputy Commissioner on behalf of the Commissioner and Commissioner on 17.12.1998 and 7.7.1999 respectively, appellant requested

the Sales Tax Authorities to collect the amounts from the Corporation. It appears that there was some dispute about the amounts payable to the appellant. The stand of the Corporation appears to be that payment in excess of the actual dues had been made to the appellant. The present dispute does not relate to the said controversy.

Undisputedly, arbitration proceedings have been initiated. The Commercial Tax Officer, respondent No- I issued notices of attachment to Lakshmi Vilas Bank Limited, Secunderabad to attach bank account of the appellant to the extent Rs. 10,44,396/-. Writ Petition was filed before the High Court questioning the action. The High Court by impugned judgment dismissed the writ petition holding that there was no valid Circular in existence. The High Court was of the view that letter issued by the Deputy Commissioner, Commercial Taxes cannot be equated with the circular which the Commissioner alone could have issued. It is also not relevant that in the arbitration proceedings, Corporation has been held liable to pay amounts which have been deducted at source at tax as Commercial Tax Officer was not a party to such proceedings.

In support of appeals, learned counsel for the appellant submitted that notwithstanding the fact that the parties accept the position that whatever has been deducted at source has to be deposited with the Commercial Tax Department, the appellant is being asked to pay the amount again. Nobody disputes that the Corporation was required to deduct the amount and to deposit it. In fact the dispute on which the Corporation placed reliance has nothing to do with the question of deposit of amounts which has been deducted at source. The State Government accepts that the Deputy Commissioner had issued communication in question acting on behalf of the Commissioner and it is a Circular by the Commissioner. It has also accepted that the Corporation is to deposit amounts which it has deducted at source.

Learned counsel for respondents 1 and 2 submitted that Commercial Tax Officer and the State Government did not dispute the stand that the Corporation has to deposit the amounts which has been deducted at source. The stand of the Corporation essentially is that there is some dispute about the amounts to be paid to the appellant and in fact its stand is that the payment in excess of what is legally due has been made.

The basic issue is whether the amount which has been deducted at source by the Corporation is required to be deposited with the Commercial Tax Department. There is no scope for any controversy on this score. The amounts have been deducted in terms of the directions given by the Commissioner. The relevant portion of the Circular dated 17.12.1998 reads as follows:

"During the course of meeting, I have made it clear to the suppliers that the tax should be deducted at source, that is by the Corporation in respect of the supplies of goods wherever tax is leviable. I, therefore, request you to kindly to confirm to the Commissioner of Commercial Taxes that the Corporation will be undertaking to deduct tax at source before paying the consideration to all the suppliers of goods ADARNA PROJECT. The tax so deducted

from these suppliers, in case they are registered with ACTO Punjagutta Circle, under the said proceedings, may be paid through crossed cheque drawn in favor of Commercial Tax Officer, Punjagutta Circle, Hyderabad duly indicating the names of suppliers and the tax amount deducted from them in the covering letter. A certificate of the deduction may also be issued to the individual suppliers. In respect of suppliers who are already registered in this State other than in Punjagutta Circle, such crossed cheques may be issued in favour of the concerned C.T.O. in the State and sent by registered post to that C.T.O."

The stand of the Corporation that it has raised the dispute about the amounts payable is really unconnected with the issue under consideration. Undisputedly, since the amounts have been deducted at source from the amounts paid to the appellant for supply of articles, Corporation had to deposit the amounts.

In the Circular of the Deputy Commissioner as quoted above, it has been clearly stated that the tax is to be deducted at source wherever tax is leviable. In the Commissioner's Circular dated 7.7.1999, it has been clearly stated that in the meeting held on 27.3.1999, it was decided to deduct tax at source in respect of all purchases made by the Corporation and to deposit the said amount with the Commissioner.

In view of the aforesaid factual position, we direct that the Corporation should deposit the amounts which have not yet been deposited in respect of amounts deducted at source as tax. The deposit shall be made within one month from today. It is unnecessary to state that we have not expressed any opinion on the dispute relating to the entitlement of the appellant and the question where there has been any over payment as claimed by the Corporation. The appeals are allowed to the aforesaid extent. No costs.