

Indo National Ltd. and others

Vs

Deputy Commissioner of Commercial Taxes

Writ petn. (Civil) No. 361 of 1986, with Civil Appeal No. 728 of 1986

(S. Ranganathan, V. Ramaswami, A. S. Anand JJ)

30.01.1992

ORDER

1. In this writ petition, the petitioner company challenges the levy of Central Sales Tax on certain transactions. This levy was the result of an order passed by the Deputy Commissioner of Sales Tax. The petitioner came to this Court at the stage when notice had been issued by the Deputy Commissioner. This Court issued a show cause notice and permitted the Deputy Commissioner to pass the revision order. This has been done some time in 1988. However, since this writ petition was pending in this Court challenging the proceedings, the petitioner did not file any appeal to the Tribunal. However, after the revision order was passed by the Deputy Commissioner, there was an amendment of the writ petition and the order of the Deputy Commissioner was in terms challenged. This amendment has been allowed.

2. After hearing learned counsel for both sides, we are of the opinion that since the petitioner has the remedy of a direct appeal to the Sales Tax Appellate Tribunal from the order of the Deputy Commissioner and since, primarily, the question at issue will turn on the facts of the case, it may not be appropriate to interfere at this stage, particularly when there is already a stay order restraining the department from collecting the amounts of central sales tax pending disposal of this writ petition. In view of this, we adjourn this writ petition by a period of six months and direct the petitioner to file an appeal from the order of the Deputy Commissioner to the Sales Tax Appellate Tribunal within one month from today along with an application for condonation of delay. Since the writ petition has been pending before this Court since 1986 and the petitioner has been perusing diligently his remedies against the order of the Sales Tax Authorities, we are sure that the application for condonation of delay will be considered by the Tribunal in the light of S. 14 of the Limitation Act, particularly since we are directing the petitioner to go in appeal only on the request of the counsel for the State of Andhra Pradesh. We direct the Tribunal to dispose of the appeal expeditiously, within a period of three months from the date of the filing of the appeal.

3. The petitioner has also impleaded various other States on the ground that the very same transactions have been subjected to sales tax under the various State enactments. In fact, all through, the petitioner has accepted its liability under the local sales tax enactment and appears to have also paid the tax. The grievance of the petitioner is that, in the event of the impugned levy of Central Sales tax being upheld, the taxes paid to the various States under the various State enactments in respect of the same transactions have to be refunded to it. On this issue, we have given notice to the various States which have been impleaded as parties. Sri Poti appearing for the State of Kerala submits that the petitioner cannot seek any relief against the assessment orders in the various States

which were based on returns filed by the petitioner and which have already become final unless those assessment orders are challenged and set aside in appropriate proceedings. If this argument be correct, it may be necessary for the petitioner to amend the petition and seek appropriate relief for quashing the various assessment orders and getting refunds in the event of the Central Sales tax assessment being finally upheld. Learned counsel for the petitioner, however, states that this may not be necessary and that there are decisions of this Court on the basis of which he can make claims for refund of the sales tax paid in various States in case these transactions are held to be inter-State sales. We express no opinion on this issue for the present. We leave it to the petitioner to consider whether it should take any steps as suggested by Sri Poti and if so whether it should do so immediately or after the Tribunal's decision in the Andhra Pradesh matter.

4. Learned counsel for the petitioner submits that there are six assessment years 1978-79 to 1983-84 which are involved in this writ petition. Of these the Deputy Commissioner has passed orders in revision only in three years. namely, 1978-79 to 1980-81. In respect of the other three years there are assessment orders more or less on the same lines. For the latter three years the appeals have to be preferred to the first appellate authority. The petitioner will be at liberty to file these appeals within a month along with applications for condonation of delay. The first appellate authority may not immediately dispose of these appeals but keep them pending until the Appellate Tribunal disposes of the appeal for the first three assessment years. Thereafter, the first appellate authority should dispose of the appeals within a period of one month in the light of the Tribunal's order.

5. As already stated this writ petition is adjourned for six months. It may be listed in the 3rd week of July, 1992. Interim order passed in this case will continue in force until further orders.

Order accordingly.

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