APHC010250082024

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3525]**
(Special Original Jurisdiction)

MONDAY, THE TWENTY FIRST DAY OF APRIL
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE DR JUSTICE K MANMADHA RAO

WRIT PETITION NO: 12529/2024

Between:

Punjab Carbonic (p) Ltd **...PETITIONER**

AND

The Commercial Tax Officer and Others **...RESPONDENT(S)**

Counsel for the Petitioner:

1. A SARVESWAR RAO

Counsel for the Respondent(S):

1. GP FOR COMMERCIAL TAX
2.

The Court made the following Order:

(per Hon'ble Sri Justice R. Raghunandan Rao)

Heard Sri A. Sarveswara Rao, learned counsel appearing for the petitioner and learned G.P. for Commercial Tax, appearing for the respondents.

2. The petitioner is in the business of purchasing carbon dioxide and production of liquid carbon dioxide by scrubbing, purification, drying, filtration and liquefaction and selling the purified liquid carbon dioxide and Dry Ice. The petitioner, who was registered under the Andhra Pradesh Value Added Tax Act, 2005, (hereinafter referred to as the VAT Act) had declared the turnovers in relation to the said products, for the period February, 2016 to June, 2017 and paid tax @ 5% on the turnover of Carbon Dioxide Gas and @ 14.5% on the sale of Dry Ice. The Assessing Officer had accepted the said rate of tax, in relation to sale of Carbon Dioxide and passed an assessment order dated 12.04.2018 for the period February 2016 to June 2017.

3. On 23.02.2024, the Joint Commissioner (ST), Vizianagaram Division, who is arrayed as the 2nd respondent herein, had issued a notice of revision, calling upon the petitioner to show cause as why the turnover relating to the sale of liquid Carbon Dioxide should not be taxed @ 14.5%. In the show cause notice, the 2nd respondent simply stated that purified liquid Carbon Dioxide gas falls in the unclassified category of goods i.e., Schedule-V to the VAT Act, and is liable to be taxed @ 14.5% instead of 5%. No reasons, why such a view should be taken, is adduced in the show cause notice. The petitioner, after receipt of the show cause notice, had filed his objections and had also availed of a personal hearing.

4. The contention of the petitioner was that, liquid Carbon Dioxide falls within Entry-100 (190) in Schedule-IV of the VAT Act and the rate of tax

would be 5%. The case of the petitioner was that Entry 100(190) was applicable to “other inorganic acids and other inorganic oxygen compounds of non-metals” falling under HSN Code Heading No.2811.

5. The 2nd respondent stated that HSN Code Heading No.28112190 is classified under Chapter 28 (Inorganic Chemicals; organic or inorganic compounds of precious metals, of rare-earth metals, of radioactive elements or of; isotopes) of ITC (Indian Tariff Code). The 2nd respondent took the view that this category of goods would not include liquid Carbon Dioxide. The 2nd respondent also took the view that Entry 100(190) does not include liquid Carbon Dioxide and as such the said product would have to be treated to fall within the ambit of Schedule-V and not within Entry-100 (190) of Schedule-IV.

6. On this basis, the 2nd respondent passed an order dated 22.03.2024 holding that the turnover relating to sale of liquid Carbon Dioxide would attract tax @ 14.5% and called upon the petitioner to pay the said tax. It may also be noted that except this ground, no other ground was raised either in the show cause notice or in the impugned order of revision.

7. Aggrieved by the said revisional order, dated 22.03.2024, the petitioner has approached this Court by way of the present writ petition. The impugned order is challenged on two grounds. Firstly, the order of revision is beyond the period of limitation prescribed under the provisions of the VAT Act. Secondly, the view of the 2nd respondent that the liquid Carbon Dioxide does

not fall within Entry-100(190) of Schedule-IV of the VAT Act, is without any basis and on the basis of a wrong understanding of law.

8. The petitioner contends that the order of assessment was passed on 12.04.2018. The revisional order, against such an order of assessment, under the provisions of Section 32(3) of the VAT Act, would be four years from the date of service of the assessment order. The said period expired in the year 2022. However, the impugned revision order was passed on 22.03.2024, after about six years from the date of service of the assessment order and is consequently beyond the period provided under Section 32(3) of the VAT Act and has to be set aside on that short ground.

9. The 2nd respondent filed a counter affidavit in which it was stated that the period of limitation for passing such an order had been extended by virtue of the orders of the Hon'ble Supreme Court, dated 23.03.2020, which was subsequently extended by another order dated 10.01.2022 in M.A.No.21 of 2022 in M.A.No.665 of 2021 in Suo Motu WP (C) No.3 of 2020. The Hon'ble Supreme Court in its order dated 23.03.2020 had directed that the period between 15.03.2020 and 14.03.2021 would be excluded for the purpose of calculation of limitation and the same would start only from 15.03.2021. This period of exclusion was extended by another order, dated 10.01.2022, from 15.03.2020 to 28.02.2022. The 2nd respondent would contend that this extension/exclusion of limitation would be available to the orders passed by the statutory authorities also. The 2nd respondent relies upon a judgment of a

Division Bench of this Court in **V-Guard Industries Limited vs. The Commercial Tax Officer, Mangalagiri Circle and Ors**.,[1].

10. Learned counsel for the petitioner would contend that the said judgment would not be applicable in view of the judgment of the Hon'ble Supreme Court in **S. Kasi vs. State through the Inspector of Police, Samaynallur Police Station, Madurai District**[2]. The learned counsel would contend that the extension/exclusion of limitation granted by the Hon'ble Supreme Court in the aforesaid orders, are only for the benefit of litigant public and the same would not be available to extend limitation or period of time available to a statutory authority to pass any order.

11. In **S. Kasi vs. State through the Inspector of Police, Samaynallur Police Station, Madurai District**, the petitioner had sought statutory bail, available under Section 167(2) of the Code of Criminal Procedure, on the ground that the charge sheet, in his case, had not been filed within 60 days of his incarceration or of his being placed in judicial custody. The State contended that the period stipulated under Section 167(2) Cr.P.C., would stand extended by virtue of the judgment of the Hon'ble Supreme Court dated 23.03.2020. The Hon'ble Supreme Court, after going through the order passed by the Hon'ble Supreme Court, dated 23.03.2020 in in Suo Motu WP (C) No.3 of 2020, held as follows:

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[1] 2022 (3) ALD 77
[2] 2020 SCC OnLine SC 529

19. The limitation, for filing petitions/applications/suits/ appeals/all other proceedings, was extended to obviate lawyers/litigants to come physically to file such proceedings in respective courts/tribunals. The order was passed to protect the litigants/lawyers whose petitions/applications/suits/ appeals/all other proceedings would become time-barred they being not able to physically come to file such proceedings. The order was for the benefit of the litigants who have to take remedy in law as per the applicable statute for a right. The law of limitation bars the remedy but not the right. When this Court passed the above order for extending the limitation for filing petitions/applications/suits/appeals/all other proceedings, the order was for the benefit of those who have to take remedy, whose remedy may be barred by time because they were unable to come physically to file such proceedings. The order dated 23-3-2020 [*Cognizance for Extension of Limitation, In re*, (2020) 19 SCC 10] cannot be read to mean that it ever intended to extend the period of filing charge-sheet by police as contemplated under Section 167(2) Cr.PC. The investigating officer could have submitted/filed the charge-sheet before the (In-charge) Magistrate. Therefore, even during the Lockdown and as has been done in so many cases the charge-sheet could have been filed/submitted before the Magistrate (In-charge) and the investigating officer was not precluded from filing/submitting the charge-sheet even within the stipulated period before the Magistrate (In-charge).

29. We, thus, are of the view that neither this Court in its order dated 23-3-2020 [*Cognizance for Extension of Limitation, In re*, (2020) 19 SCC 10] can be held to have eclipsed the time prescribed under Section 167(2) Cr.PC nor the restrictions which have been imposed during the Lockdown announced by the Government shall operate as any

> restriction on the rights of an accused as protected by Section 167(2) regarding his indefeasible right to get a default bail on non-submission of charge-sheet within the time prescribed. The learned Single Judge committed serious error in reading such restriction in the order of this Court dated 23-3-2020 [*Cognizance for Extension of Limitation, In re*, (2020) 19 SCC 10].

12. A learned Single Judge of the Hon'ble High Court at Calcutta in the case of **Gobindo Das & Ors., vs Union of India and Ors**.,[3], while considering the period of time available under the provisions of the Prevention of Money Laundering Act, 2002, in relation to an attachment under Section 5 of the said Act, after following the judgment of the Hon'ble Supreme Court in **S. Kasi vs. State through the Inspector of Police, Samaynallur Police Station, Madurai District**, had held that the order, dated 23.03.2020, was passed to obviate difficulties faced by lawyers/litigants, who had filed the case in respective Courts and Tribunal and the same would not be available to an adjudicating authority as such an authority cannot call himself a litigant or advocate or a tribunal or Court of quasi judicial authority. This judgment was followed by a learned Single Judge of the High Court of Delhi in the case of **Vikas WSP Ltd., vs. Directorate Enforcement**[4]. In this case also the question of the validity of a provisional order of attachment, under Section 5 of the Prevention of Money Laundering Act, came to be considered and was held to have expired upon completion of 180 days from the date of the order, on

[3] 2021 SCC OnLine Cal. 2739
[4] 2021 (376) E.L.T. 201 (Del)

the ground that the order of the Supreme Court dated 23.03.2020 is not available to extend the period of validity. It appears that a Division Bench of the Hon'ble High Court for the State of Telangana, by order dated 10.08.2022 in W.P.No.31958 of 2022, had also taken a similar view. However, this order is an interlocutory order.

13. In view of the observations of the Hon'ble Supreme Court in **S. Kasi vs. State through the Inspector of Police, Samaynallur Police Station, Madurai District**, which was followed by the Hon'ble High Court of Calcutta and High Court of Delhi, it must be held that the extension of time granted by the Hon'ble Supreme Court in the order dated 23.03.2020 and order dated 10.01.2022 would only extend limitation to litigants, who are seeking to approach the appropriate Courts and tribunals and such extension of limitation is not available to an authority acting under any statute. In the circumstances, the order of revision is beyond the period available under Section 32 of the VAT Act and is consequently *non est*.

14. The petitioner contended that liquid carbon dioxide would fall in Entry-100(190) of Schedule-IV as all products, which are "other inorganic acids and other inorganic oxygen compounds of non-metals" are taxable under Entry-100(190). The contention of the petitioner is that liquid carbon dioxide is an oxygen compound of carbon which is a non-metal. The learned counsel for the petitioner would also contend that this entry is treated to be akin to HSN Heading No.2811 21 "other inorganic acids and other inorganic

oxygen compounds of non-metals". The 2nd respondent contends that this entry is otherwise, and reads as follows:

> "The HSN code is classified under Chapter 28 (Inorganic Chemicals; organic or inorganic compounds of precious metals, of rare-earth metals, of radioactive elements or of; isotopes) of ITC (Indian Tariff Code)."

This entry relates to HSN Code 28112190. However, the HSN Code mentioned against Entry No.100(190) is 2811 and not any further special heading. What is required to be seen is whether carbon dioxide, whether in liquid form or in gaseous form, would fall under Heading No.2811. As submitted by the learned counsel for the petitioner, the description of goods in Entry 100(190) of Schedule-IV is other inorganic acids and other inorganic oxygen compounds of non-metals and carbon dioxide definitely would fall within such a category. The fact that there are other products mentioned under the main Heading No.2811 would not mean that carbon dioxide does not fall within Heading No.2811. In any event, Heading No.2811 21 specifically mentions carbon dioxide, it may however be noted that there is no qualification that carbon dioxide should be in a gaseous form. In the absence of any such qualification, carbon dioxide in gaseous form or liquid form, would fall under HSN Heading No.2811 and also in Entry No.100(190) of Schedule-IV of the VAT Act.

15. The 2nd respondent has now raised a new ground in the counter affidavit, stating that a declaration has to be obtained from the purchaser of

carbon dioxide to obtain concessional rate of tax available to such products. The 2nd respondent states that this requirement was introduced on 24.09.2008 by way of Amendment Act 28/2008 to the A.P. VAT Act, 2005, by virtue of Note-6 included under Entry-100. This contention was not raised either in the revisional notice or in the order under revision. In such circumstances, this contention cannot be raised to defend the order of revision (**please see Mohinder Singh Gill and Anr., vs. Chief Election Commissioner, New Delhi and Ors.,**[5]).

16. For all the aforesaid reasons, the order of revision requires to be set aside and is accordingly set aside.

17. Accordingly, the writ petition is allowed. There shall be no order as to costs. As a sequel, pending miscellaneous applications, if any shall stand closed.

R. RAGHUNANDAN RAO, J

Dr. K. MANMADHA RAO, J

Js.

[5] (1978)1 SCC 405

THE HON'ABLE SRI JUSTICE R RAGHUNANDAN RAO

AND

THE HON'BLE DR. JUSTICE K. MANMADHA RAO

WRIT PETITION No.12529 of 2024

(per Hon'ble Sri Justice R Raghunandan Rao)

21st April, 2025

Js