

APHC010550882023



IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3488]

WEDNESDAY ,THE ELEVENTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE HARINATH.N

WRIT PETITION NO: 28529/2023

Between:

Patanjali Foods Limited

...PETITIONER

AND

The Assistant Commissioner St Fac and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.VIVEK CHANDRA SEKHAR S

Counsel for the Respondent(S):

1. GP FOR COMMERCIAL TAX

WRIT PETITION NO: 4944/2024

Between:

Patanjali Foods Limited

...PETITIONER

AND

Deputy Commissioner State Tax and Others...RESPONDENT(S)

Counsel for the Petitioner:

1.VIVEK CHANDRA SEKHAR S

Counsel for the Respondent(S):

- 1.GP FOR COMMERCIAL TAX (AP)
- 2.
- 3.GP FOR FINANCE PLANNING (AP)

The Court made the following Common Order:

Heard Sri S. Vivek Chandra Sekhar, Sri Ashwarya Sharma and Kinjal Shrivastava, learned counsel appearing for the petitioner and the learned Government Pleader for Commercial Tax and the learned Government Pleader for Finance & Planning, appearing for the respondents.

2. The petitioner in both these cases is one M/s.Patanjali Foods Limited. It was earlier known as "Ruchi Soya Industries Limited". The petitioner, on account of its financial difficulties, had been subjected to insolvency proceedings under Insolvency and Bankruptcy Code 2016.

3. In the course of these proceedings, a resolution plan was prepared by the committee of creditors and the same was approved by the National Company Law Tribunal, Mumbai Bench, by an order dated 04.09.2019. The resolution plan which had been approved by the NCLT provided that all dues of the creditors, including the dues of the State were to be adjusted out of amounts paid by the successful applicants in the resolution process.

4. The order of the NCLT was challenged before the National Company Law Appellate Tribunal (NCLAT), by way of Appeal No.1068 of 2019. The said appeal was dismissed on 09.12.2019 and the order of NCLT had become final.

5. The petitioner-company was put under new management and recommenced its operations. It may also be mentioned that the petitioner had earlier obtained registration for its Kakinada plant, under the AP VAT Act and a separate registration under the AP VAT Act for its Ampapuram Plant. These two registrations were carried over under the GST regime and the petitioner was operating under two separate GST registrations for its Kakinada plant and Ampapuram Plant.

6. The petitioner received two separate Demand-cum-Adjudication orders being the order, dated 03.06.2023, issued by the Assistant Commissioner (ST)(FAC), Kakinada and the order, dated 25.11.2023, passed by the Deputy Commissioner (ST), Vijayawada. Under these Demand-cum-Adjudication orders, the petitioner was called upon to pay tax interest and penalty amounting to Rs.20,21,420/- for the period July 2017 to March 2020 in the orders issued by the Assistant Commissioner, Kakinada and tax, interest and penalty of Rs.2,87,15,819/- in the order issued by the Deputy Commissioner, Vijayawada for the period July 2017 to March 2020.

7. Aggrieved by these two orders/notices of demand, the petitioner has approached this Court, by way of these two writ petitions. Both these writ petitions are being disposed of, by way of a common order as a common issue arises in both the cases.

8. The main contention of the petitioner is that the petitioner is not liable to pay any of the aforesaid amounts in view of the order of the National Company law Tribunal dated 04.09.2019. It is contended that the resolution plan, which was approved by the NCLT, on 04.09.2019, provided for payment of Rs.25 crores towards clearing all the statutory dues, including claims by all Government authorities. Upon approval of this offer, the petitioner would not be liable to clear any of such statutory duties set out in the scheme.

9. The learned Government Pleader for Commercial Taxes would submit that the order of NCLT would not be binding upon the State of A.P as no notice of any nature was issued to the State of Andhra Pradesh in relation to the insolvency proceedings pending before the NCLT. He further submits that though publication of notice or proceedings before NCLT, Mumbai Bench had been published in the newspapers circulating all over the country, no such publication was made in any of the newspaper circulating in the State of Andhra Pradesh. He also relies upon Regulation No.6 of the Insolvency and Penalty Board of India, Fast track Insolvency Resolution Process for Corporate Persons Regulations, 2017 and Section 88 of the GST Act to contend that the order would not be applicable in relation to the present cases

as no notice required to be issued under Section 88 of the GST Act had been served on the assessing authorities.

10. The question of extinguishment of liability of corporate which have undergone the CIRP process came to be considered by the Hon'ble Supreme Court of India in the case of **Ghanshyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company**¹. The Hon'ble Supreme Court after an elaborate review of the provisions of law had concluded in the following manner:

102.1. That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.

11. In the circumstances, it must be held that the liability of the petitioner, arising out of the AP VAT Act or the GST Act stands extinguished to the extent of its liability up to 4th September, 2019.

¹ (2021) 9 SCC 657

12. The contention of the learned Government Pleader for Commercial Taxes that the order of NCLT is not binding on the State of Andhra Pradesh in view of Section 88 of the GST Act would have to be negated in as much as Section 238 of the Insolvency and Bankruptcy Code provides for a non-obstante clause overriding all other laws.

13. The further contention of the learned Government Pleader for Commercial Taxes that the order would not be binding as no notice had been given to the State of Andhra Pradesh prior to passing of the said order would also have to be negated as such the plea only, can be taken for setting aside the said order. It must be held that as long as the said order holds, it would not be open for any person, who is bound by the order, to contend that such an order is not binding.

14. In the circumstances, both the Writ Petitions are allowed by setting aside the Demand-cum-Adjudication orders dated 03.06.2023, issued by the Assistant Commissioner (ST)(FAC), Kakinada and the order dated 25.11.2023 passed by the Deputy Commissioner (ST), Vijayawada. However, since these proceedings have covered the period 05.09.2019 to 31.03.2020, which would not be effected by the orders of the NCLT, Mumbai Bench dated 04.09.2019, it would be open to the Assessing Authorities to issue fresh notice for quantifying the taxes and other dues arising for the period 05.09.2019 to 31.03.2020. Needless to say such assessment shall be done in accordance with law. There shall be no order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

R. RAGHUNANDAN RAO, J

HARINATH.N,J

RJS

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO
&
HON'BLE SRI JUSTICE HARNITH.N



WRIT PETITION Nos.28529 of 2023 & W.P.No.4944 of 2024

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

Dt: 11.09.2024

RJS