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CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH :
AT HYDERABAD.

O.A.No.1176 & 1404 of 1994.

Date of Order - 5th November, 1997.

OA 1176/94.

Between:

1. D.L.R.L. Civilian Employees Union
(Regd.No.A-65) recognised by Government
of India and affiliated to A.I.D.E.F.No.152,
rep. by its President, B.Chandraiah,
Son of Ramaiah, aged 49 years, working
as Tradesman 'A' in D.L.R.L.,
resident of Hyderabad.
2. G.T.Gopal Rao, son of Late Shri Radhakrishnan Rao,
Aged 42 years, Occ-Sr.Scientific Asst. DLRL,
Hyderabad. Applicants

(By Advocate Mr. S. Lakshma Reddy)

And

1. Director, Defence Electronics Research
Laboratory (D.L.R.L.) Chandrayanagutta,
Hyderabad.
2. Commissioner of Professional Tax /
Commissioner of Commercial Taxes, A.P.,
Hyderabad.
3. Deputy Commercial Tax Officer, Saidabad,
Malakpet Circle, Hyderabad. ... Respondents

(By Mr. V.Bhimanna, Addl.CGSC and Mr.M.Ramaiah, SGP for R-2 & 3)

OA 1404/94

Between:

1. D.E.F.M.E.T. Lab workers National Union,
Regd.No.3219/68, D.M.R.L., Kanchanbag,
Hyderabad, rep. by its President M.Sailu,
Son of Venkataiah aged 40 years, working
as Tradesman 'A', D.M.R.L., Kanchanbag,
r/o Hyderabad.
2. R.Ramaiah, son of Rosaiah, aged 46 years,
working as Duftari, D.M.R.L., Kanchanbag,
Hyderabad, r/o Hyderabad. ... Applicants

(By Advocate Mr. S. Lakshma Reddy)

And



1. Director, Defence Metallurgical Research Labs, (D.M.R.L.) Kanchanbag, Hyderabad.
2. Commissioner of Professional Tax/Commissioner of Commercial Taxes, A.P. Hyderabad.
3. Deputy Commercial Tax Officer, Saidabad, Malakpet Circle, Hyderabad. ... Respondents

(By Mr. V. Bhimanna, Addl CGSC and Mr. M. Ramaiah, SGP for R-2&3)

Coram :

Honourable Mr. R. Rangarajan, Member (Admn.)

Honourable Mr. B.S.Jai Parameshwar, Member (Judl.)

O R D E R .

(Per Hon. Mr. B.S.Jai Parameshwar, Member (Judl.))

1. Heard Mr. S. Lakshma Reddy, learned counsel for the applicants, Mr. V. Bhimanna, learned counsel for the respondent No.1 and Mr. M. Ramaiah, learned counsel for the respondents 2 and 3.
2. Both these O.As are clubbed together since the grounds urged and the reliefs claimed are similar.
3. The Andhra Pradesh State Legislative Assembly enacted an Act called the A.P.Tax on Professions, Trades, Callings and Employment Act, 1987 (Act No.22/87). It came into force effective from 16/18.4.1987. The respondent No.3 is the authority for implementing the provisions of the said Act over the area in which the respondent No.1 is carrying on its factory operations. The respondent No.1 is an employer within the definition of word 'employer' as defined under Section 2(f) of the said Act. Section 4 of the said Act provides levy of tax on professions, trades and employment for the benefit of the State. Under Sec.4(2) of the said Act, every person engaged in profession, trade, callings or employment in the State and falling under anyone or other of the classes

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specified in column (2) of the First Schedule of the Act shall be liable to pay a tax at the rate specified in the corresponding entry in column (3) thereof.

4. The respondent No.3 by his notices No.A/81/94 dated 28.6.94 and 15.7.94 called upon the respondent No.1 in these OAs to pay the arrears of professional tax for the years 1987-88 to 1991-92 (5 years) amounting to Rs.16,10,000/- and Rs.13,90,000/- respectively. As a result of the said notice, the respondent No.1 attempted to recover the arrears of professional tax from its employees in monthly instalments.

5. There are two applicants in OA No.1404/94.

Applicant No.1 is the registered Union of the Laboratory workers working under the respondent No.1. Applicant No.2 is a member of the said Union and an employee under the respondent No.1.

5(a). Likewise, the applicant No.1 in O.A.No.1176/94 is the Union of the employees working under the Defence Electronics Research Laboratory (DLRL). The applicant No.2 is a member of the said Union and an employee under the respondent No.1.

5(b). They have filed these O.As to declare that the impugned notice dated 15.7.1994 issued by the respondent No.3 to the respondent No.1 is illegal and contrary to the provisions of the Act, unauthorised and without jurisdiction and consequently to give them all the benefits. That means, the respondent No.1 shall not recover any arrears of professional tax from them.

6. The respondent No.1 in OA 1176/94 as a result of the notice issued by the respondent No.3 passed an order-D.O.Part No.294 dated 9.8.1994 to effect the recovery of arrears of professional tax from his employees in 12 equal monthly instalments commencing from September, 1994. Hence they have prayed the Tribunal to declare that the impugned notices dated 28.6.1994 and 15.7.1994 issued by the respondent No.3 to the respondent No.1 and the consequential order passed by the

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respondent No.1 dated 9.8.1994 as illegal, unauthorised and without jurisdiction.

7. Their main ground in challenging the impugned orders is that the impugned recovery of professional tax is illegal and violative of Article 265 of the Constitution of India; that the arrears of tax claimed in the notices dated 28.6.1994 and 15.7.1994 are barred in view of Section 8(2) of the Act; that the respondents have no jurisdiction to recover the same; that the demand for arrears of professional tax made in the said notices is illegal; that the impugned notices were issued without giving any opportunity before passing the assessment order either under Section 8(3) or under Section 9 of the Act and that the respondent No. 1 had no jurisdiction to order recovery of the arrears of professional tax from their pay in monthly instalments.

8. The respondent No.1 filed a counter stating that the implementation of the provisions of the Act created some doubts; that therefore there was some delay in implementing the said provisions of the Act; that the whole issue was referred to D.R.D.O. Headquarters, Ministry of Defence, the Commercial Tax Department and the concerned State Government authorities; that only on receipt of clarification, the Defence Laboratories decided to effect recovery of the professional tax effective from March, 1992; that as regards arrears from 1987 to 1992, a Daily Order Part-I was published on 9.8.1994 vide No.294 informing the concerned employees; that the respondent No.3 informed him for remittance of the professional tax with arrears effective from 15.6.1987; that, that was the first notice served on him; that subsequently the respondent No.3 issued show cause notice that in the meantime the employees' Union had filed O.A.No. 752/92 on 8.9.1992 on the subject before this Tribunal; that the same was dismissed by order dated 30.4.1993; that in view of this decision, the Laboratory requested

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the respondent No.3 to permit to commence the recovery of the professional tax from its employees from September/October, 1992 onwards; that it was a dispute between the applicants and the respondents 2 and 3; that he was only to carry out the statutory obligations under the Act and that suitable orders may be passed in the O.As.

9. The respondents 2 and 3 filed their counter stating that the respondent No.1 passed the order dated 9.8.1994 regarding recovery of professional tax on the basis of the notices issued by the authorities under the said Act from 15.6.1987 to 31.3.1992 which was communicated to the employees who were actually liable to pay the professional tax from the date of commencement of the said Act i.e. 15.6.1987; that notices were issued to the respondent No.1; that the employer-the respondent No.1 in the case, is responsible for all the acts done by him; that he is required to pay professional tax to the State Government; that the officers entrusted with the implementation of the provisions of the Act exercised their powers in completing the assessments and serving the assessment orders and issuing the notices; that this Tribunal in OA No.752/92 has upheld the action of the respondents 2 and 3 in directing the respondent No.1 to recover professional tax from its employees.

10. In O.A.No.1176/94 this Tribunal passed an order on 28.9.94 staying recovery of tax due on 31.3.1990 until further orders. In O.A.No.1404/94 this Tribunal on 21.11.94 passed an order that no deduction should be made in regard to professional tax due from the applicants for the period ending 31.3.1990.

11. The respondent No.3 issued notices dated 28.6.1994 and 15.7.1994 calling upon the respondent No.1 to pay arrears of professional tax amounting to Rs.13,90,000/- and Rs.16,10,000/-. It is not in dispute that the respondent No.1 comes within the definition of

word 'employer' as defined under the Act. In view of the decision of this Tribunal in O.A.No.752/92 decided on 30.4.1993 it is clear that the employees of the Defence Laboratories are also liable to pay professional tax imposed under the said Act. There is no dispute about it.

12. The point for our consideration is, whether the respondent No.3 would recover arrears of tax from the employees of the Defence Laboratories from 15.6.1987.

13. The notice issued by the respondent No.3 to the respondent No.1 clearly indicates that they are calling upon them to pay the arrears of professional tax from 1987-88 to 1991-92. The applicants relying upon Section 8(2) of the Act submitted that the claim made by the respondent No.3 for recovering the arrears of tax from the years 1987-88 to 1991-92 is barred. Section 8(2) of the Act reads as under :

" 8. Assessment of an assessee :

(1) x x x x x x x

(2) The amount of tax due from any assessee shall be assessed separately for each year within a period of four years from the expiry of the year to which the assessment relates.

(3) x x x x x x x "

13.A. The impugned notices dated 15.7.1994 and 28.6.1994 were issued by the respondent No.2. The learned counsel for the applicants contended that the respondent No.2 has issued the consolidated notice and that the respondent No.2 was expected to pass the assessment orders individually for each year. These two notices contained the arrears of professional tax for the period from 1987-88 to 1991-92.

13.B. The respondents 2 and 3 in their counter have clearly stated that for every year show cause notices were issued to the respondent No.1 indicating the ^{assessed} impugned professional tax arrears and to be collected from his

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employees. They have even furnished the show cause notice and assessment orders for the year 1987-88 onwards. Therefore, it cannot be said that the notices dated 28.6.1994 and 15.7.1994 are contrary to the provisions of the Act. The contentions of the applicant are therefore liable to be rejected.

14. The notice issued by the respondent No.3 calling upon the respondent No.1- employer, to pay arrears of tax is outside the purview of this Tribunal in view of Section 27 of the Act. Section 27 reads as follows :

" 27. Bar of jurisdiction of Courts :- No court shall entertain any suit, or other proceeding to set aside or modify, or question the validity of any assessment, order or decision made or passed by any officer or authority under this Act or rules made thereunder or in respect of any other matter falling within its or his scope."

15. The object of levying professional tax is for the benefit of the State (See Section 4(1) of the Act). The authorities have power to levy or collect tax at the rate prescribed in the 1st Schedule to the Act. The authorities under the Act are empowered to pass order directing the employer to recover the tax. Under Section 15 (1) a provision is made for an aggrieved party to prefer an appeal. Section 15(1) reads as follows :

" 15. Appeals :- (1) Any assessee (not being an Officer of the State Government or the Central Government) aggrieved by any order passed by any authority under the provisions of this Act, not being an order passed under sub-section(3) of Section 8, may within thirty days from the date on which the order was served on him, appeal to the appellate authority ;

Provided that the appellate authority may for sufficient cause shown admit an appeal preferred after the expiry of the period of thirty days aforesaid."

The word 'assessee' has been defined under Section 2(b) of the Act which reads as under :

" 2. Definitions :- x x x

(b) "assessee" means a person or employer by whom tax is payable under this Act."

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In view of the definition of the word 'assessee', the employees of the Defence Laboratories can challenge the notices dated 28.6.1994 and 15.7.1994 before the appropriate appellate authority. As already submitted, this Tribunal has no jurisdiction to consider the propriety or otherwise of the said notices in view of Section 27 of the Act.

16. The learned counsel for the applicants in support of his contention that the impugned notices dated 28.6.1994 and 15.7.1994 issued by the respondent No.2 is beyond the period of 4 years stipulated in Sec.8(2) of the Act relied upon the decisions of the Hon'ble Supreme Court of India in the case of State of Orissa v. Debaki Debi and others, reported in AIR 1964 SC 1413; in the case of The Commissioner of Sales Tax, Madhya Pradesh v. M/s. Amarnath Ajitkumar of Bhind, Madhya Pradesh, reported in AIR 1972 SC 38 ; in the case of Hind Wire Industries Ltd. v. Commissioner of Income Tax, W.B.-V, reported in (1995)3 SCC 136 and the Division Bench decision of High Court of Andhra Pradesh in the case of C.E.Cooper v. Municipal Commissioner of Hyderabad, reported in 1997(3)ALD 771(DB). We have perused the decision referred to by the learned counsel for the applicants.

17. We have enquired with the respondents as to why they could not implement the provisions of the Act by recovering the professional tax from the employees working under them, in time. For that an additional affidavit has been filed putting squarely the blame on the part of the employees of the organisations for not recovering the professional tax in time. On 17.10.1997 the respondent No.1 filed an additional affidavit stating that he received the initial intimation for recovery of professional tax in the office on 21.8.1987; that since levy of professional tax involved deduction of the same at source from the salaries of its employees, the implementation of the Act

was brought to the notice of the employees by the respondent No.1 vide his Daily Order No.477 dated 6.10.1987 (Annexure-R-I to the additional affidavit) for their information; that having come to know the provisions of the Act and the Daily order, the representatives of the Union approached him; that they were working in the Defence departments of the Government and therefore, they were not subject to levy of professional tax; that the matter may be taken up with the Ministry of Defence; that those employees demanded and exerted pressure on him; that the professional tax should not be recovered from the employees till such time a clarification was received from the Ministry of Defence; that they have no other alternative but to make a reference to the Ministry of Defence and deferred the recovery of professional tax till clarification from the Ministry of Defence was received; that the Ministry of Defence clarified the matter and thereafter recovery of professional tax from the employees was commenced from August/September, 1992 and it was informed to the employees that the arrears of professional tax due from 1987-88 to 1991-92 was also dated 1.7.1992 (Annexure-II to the reply) and No.359 dated 21.8.1992 (Annexure-R-III) and No.294 dated 22.8.1992 (Annexure-R-IV) that the representatives of the employees, being aggrieved by his decision, challenged the power and competence of the Commercial Tax Officer of the State of Andhra Pradesh for recovery of professional tax and also the arrears before the Tribunal and the Tribunal granted interim order; that the recovery of professional tax outstanding for the years 1987-88 to 1991-92

would be recovered in instalments on vacation of the interim orders granted by this Tribunal and the same has been submitted on those lines in the reply and that the same situation existed for recovery of arrears of professional tax from D.R.D.O. establishments situated in Hyderabad; that the reason for accumulation of professional tax arrears from 1987 to 1992 was due to representation/pressure from the representatives of the concerned employees to make reference to the ministry and that therefore, he is not responsible for such accumulation of arrears of tax. It is submitted that there was no intention on his part not to make any recovery from the employees although it was ~~done~~ ... their notice at various intervals through Daily Orders cited above; but for the circumstances explained above, the same could not be recovered. No rejoinder is ~~done~~ ... by the applicants to the additional affidavit.

18. This Tribunal has a limited jurisdiction. It cannot go into the merits of the notices issued under the provisions of the Act. This Tribunal considered the O.A.No.752/92 only ~~done~~ ... professional tax from the salary of the employees comes within the purview of service matter. The additional affidavit filed by the respondent No.1 clearly explains the reasons ~~done~~ ... the employees from 15.6.1987 onwards. The respondent No.1 cannot be blamed for non-recovery of professional tax. It ~~done~~ ... ~~done~~ ... the took a peculiar stand to the effect that they were working under the Defence Establishments of Government of India and that the State Government had no competence to levy tax on their profession. The said contention was rejected in O.A.No.752/92 and it is made clear that they are liable to

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pay professional tax. In this view of the matter, we find no merits in these O.As and hence both the O.As are liable to be dismissed. All the interim orders passed in these O.As shall stand vacated.

19. Before we part with these O.As we are compelled to express our view that the respondent No.1 has not acted with adequate care while succumbing to the pressures of the employees when the notice was received on 21.8.1987 for the year 1987-88 from the respondents 2 and 3. In case the employees ~~had been informed in writing that the recovery is stopped because of their agitation and that if the higher authorities in the Defence establishment were to decide to recover the amount then the employees should not make an issue of that.~~ respondent No.1 could have recovered the tax provisionally and kept in the custody of the department and then decide whether to pay that amount to the Professional/Commercial Tax Department or to refund to the employees on the basis of the final decision received from higher authorities. That would have helped the department to avoid any future litigation. But without examining the full implications of the demand of the employees, the respondent No.1 succumbing to the pressures, referred the case to the higher authorities of the Defence department which, in our opinion, is not a judicious decision, as no adequate care was taken initially itself to avoid future repercussions.

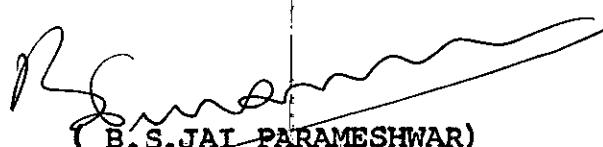
20. Now that the O.As are dismissed, the respondent No.1 has to recover the arrears of professional tax from the employees. If it is recovered in one instalment, that will be a heavy burden on the employees. Hence, the recovery has

to be done very carefully without causing much hardship to the employees working under the respondent No.1. The recovery has to be made in monthly instalments probably in consultation with the respondents 2 and 3 so that the recovery could be effected without much of problem.

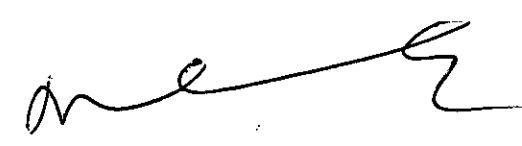
Recently, the report of the Fifth Pay Commission had been given and accepted by the Government which is to be implemented. Because of the implementation, employees may get lumpsum arrears. It is for the consideration of the respondent No.1 to examine the feasibility of

paid to the employees. But such a decision has to be taken in consultation with the employees' representatives. The respondent No.1 should act judiciously while ordering recovery.

..... the case are hereby dismissed. But in the circumstances of the case, there will be no order as to costs.


(B.S.JAL PARAMESHWAR)

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(R. RANGARAJAN)

Dated the 5th November, 1997.


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