
(1978) 08 AP CK 0007

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 814, 1095, 2948, 3087, 3285, 3286, 3465 and 3470 of 1978

Aitha Narasaiah and Co. and Another

APPELLANT

Vs

The State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 30-08-1978

Acts Referred:

Citation : (1979) 43 STC 183

Hon'ble Judges : Sambasiva Rao, C.J.;Raghuvir, J

Bench : Division Bench

Advocate : N.K. Acharya, in W.P. Nos. 814, 3087, 3465 and 3470 of 1978, P. Venkata Rama Reddy, in W.P. No. 1095 of 1978, T. Ramam, in W.P. No. 2948 of 1978 and S. Dasaratharama Reddi, in W.P. Nos. 3285 and 3286 of 1978, for the Appellant; The Government Pleader for Commercial Taxes, for the Respondent

Final Decision : Allowed

Judgement

Raghuvir, J.—The common question at issue in the group of writ petition is : When "rice" is taxed under the Central Sales Tax Act (74 of 1956) (the Central Act) whether the tax paid on paddy (out of which "rice" has been procured) has to be reimbursed to the exporter. The question is raised by some dealers having paid the tax on paddy, demanded reimbursement, in one case the revenue having reimbursed the exporter rescinded the order and in other cases the dealers apprehended in like proceedings orders of rescission per instructions of the State Government in R. O. No. B/ 7000284/76 dated 14th February, 1977, and have approached this Court to interdict the revenue authorities to refrain from invoking steps as indicated in the instructions.

2. M/s. Sri Dhanalakshmi Rice Company, Nellore, between 7th September, 1976, and 31st March, 1977, returned their inter-State turnover of rice in Rs. 4,47,290 and showed the rice was procured out of paddy purchased by them in Rs. 3,04,688, which (paddy) suffered the tax of Rs. 12,436 under the Andhra Pradesh General Sales Tax Act (6 of 1957) (the State Act). Their assessment for

the year 1976-77 was concluded on 13th February, 1978, but the company did not claim the amount (Rs. 12,436) instead made a claim for reimbursement in May, 1978, and the claim was rejected by the Commercial Tax Officer. The Deputy Commissioner of Commercial Taxes rejected such a claim on 27th June, 1978, when the assessee sought revision of the assessment order u/s 20 of the State Act 6 of 1957 (Writ Petition No. 3285 of 1978).

3. M/s. Pratesh Traders, Nellore, returned their inter-State turnover of rice between 7th September, 1976, and 31st March, 1977, in Rs. 1,93,973 procured out of paddy purchased for Rs. 1,34,268. The tax suffered towards such paddy was Rs. 5,371. Their assessment for the year 1976-77 was finalised on 9th January, 1978, but the amount of tax paid on paddy was not claimed instead on 22nd May, 1978, later, reimbursement was claimed by the assessee, the Commercial Tax Officer rejected the claim. The Deputy Commissioner of Commercial Taxes rejected the revision petition u/s 20 of the State Act 6 of 1957 on 27th June, 1978 (Writ Petition No. 3286 of 1978).

4. M/s. Tadikonda Mallaiah & Sons aver their assessment for the year 1976-77 was finalised on 13th September, 1977, involving a turnover of rice in Rs. 98,781 in the course of inter-State trade. The tax of Rs. 8,661.08 on that turnover (was-exempted) was reimbursed. However on 16th May, 1978, the assessee was informed by notice and subsequently the "rebate" was held "granted" under a mistake and on 18th June, 1978, by order the rebate was rescinded (Writ Petition No. 2948 of 1978).

5. M/s. Sri Vijayalakshmi Rice and Oil Mill averred as a dealer of paddy, they paid four per cent tax under the State Act 6 of 1957 in Rs. 51,664 and claimed reimbursement of the tax paid on paddy for the rice procured from such paddy has been exported (the first petitioner in Writ Petition No. 1095 of 1978). M/s. Lakshmi Vilas Rice and Oil Mill, Warangal, averred as dealer of paddy the firm paid four per cent tax under the State Act 6 of 1957 in Rs. 36,764 and claimed reimbursement of the tax paid (on paddy) for the rice procured from such paddy was exported (the second petitioner in Writ Petition No. 1095 of 1978).

6. M/s. Aitha Narasaiah & Co. and M/s. Sri Laxmi Narasimha & Co., Warangal (Writ Petition No. 814 of 1978), M/s. Manchala Prabhakar (Firm) at Bhongir (Writ Petition No. 3470 of 1978), Y. Venkatanarayana (Writ Petition No. 3465 of 1978) and M/s. Vauhini Trading Co., Warangal (Writ Petition No. 3087 of 1978) apprehend rescission proceedings and seek a direction to hold they "are not liable to pay any purchase/sales tax in respect of paddy purchased by them" or in the alternative "to reduce the tax leviable on rice under the Central Sales Tax Act (74 of 1956) by the amount of tax levied on paddy under the A. P. G. S. T. Act out of which such rice is produced".

7. All the dealers claim reimbursement for the period 7th September, 1976, to 31st March, 1977, and before we set down the opposition of the State Government to the writ petitions, it is necessary to notice some statutory

changes to the Central Act 74 of 1956 and to the State Act 6 of 1957 as they are material for the decision of the question at issue.

8. The Central Act 74 of 1956 was amended by Act 103 of 1976. In Chapter IV, Section 14 was amended to include paddy and rice as cereals, goods of special importance in inter-State trade and commerce. Sub-clauses (c) and (d) were added to Section 15 in that chapter.

9. The State Act 6 of 1957 was amended by the Andhra Pradesh Ordinance 18 of 1976 on 7th September, 1976. In the Third Schedule of the State Act 6 of 1957, item 21 "paddy" and item 22 "rice" were added. The Third Schedule was appended with three explanations. Explanation III is relevant and reads as under :

For the purpose of items 21 and 22, where a tax has been levied under this Act in respect of the sale or purchase inside the State of any paddy, the tax leviable on rice procured out of such paddy shall be reduced by the amount of tax levied on such paddy.

10. The amendments to the Central Act 74 of 1956 and to the State Act 6 of 1957 both were given effect from the same day, i.e., 7th September, 1976. The amending Acts indicate that if paddy suffered a tax at four paise in the rupee on the point of last purchase, explanation III in the Third Schedule to the State Act 6 of 1957 recites the tax levied on paddy in respect of rice procured out of such paddy the tax paid has to be reduced. To the same effect is Sub-clause*(c) of Section 15 of the Central Act, which reads as under:

Where a tax has been levied under that law in respect of the sale or purchase inside the State of any paddy referred to in Sub-clause (i) of Clause (i) of Section 14, the tax leviable on rice procured out of such paddy shall be reduced by the amount of tax levied on such paddy.

11. The State Government resisted the writ petitions and it is contended that (a) the tax leviable on rice under the Central Act 74 of 1956 is four per cent (rice involved in the inter-State trade) the tax leviable under the State Act 6 of 1957 on paddy is also four per cent therefore, with reference to the provisions of Section 8(2A) of the Central Act 74 of 1956, the tax on rice is at the same rate and not lower therefore the claim of the dealers is not tenable and it is urged the case of The State of Andhra Pradesh Vs. Oruganti Venkateswarlu and Bros. and Others, has no application to the claim made by the dealers, (b) It is next urged rice, when sold in inter-State trade, is not liable to be taxed under the State Act 6 of 1957 for paddy and rice are two different commodities and with reference to the language used in Section 15(c) of the Central Act 74 of 1956 rice procured out of the paddy involved in the export trade, the tax suffered by paddy cannot be reimbursed, having regard to item 22 of the Third Schedule of the State Act 6 of 1957 even when read with Section 8(2A) and Clause (c) of Section 15 of the Central Act 74 of 1956. (c) Lastly it is argued no exemption (rebate or reimbursement) can be claimed when paddy is imported within the State.

12. Adverting to the last contention [ground (c)] raised by the State Government, it may be stated none of the dealers in the above writ petitions aver to have imported paddy in Andhra Pradesh. No dealer has contended in claiming exemption on the premises of paddy having been imported. Such a claim is not countenanced u/s 8(2A) or under Clause (c) of Section 15 of the Central Act 74 of 1956.

13. The other two contentions [grounds (a) and (b)] are the two facets of the same question and, in our view, are covered by the decisions of this Court. What is the rate of rice and how is the rate to be ascertained has been considered in two decisions of this Court. Sections 5 and 5-A of the State Act 6 of 1957 were considered in Writ Petition No. 2955 of 1970 (23rd November, 1970) and batch. In that case, the above two sections were considered. Section 5 is the charging section. Section 5-A was added with effect from 1st August, 1963, levying one-fourth paise on every rupee of turnover above rupees three lakhs. The two provisions for purposes of "rate" in the context of inter-State trade were held as under :

...With regard to transactions coming under Sub-sections (2) and (2A) of Section 8 the rates of tax liability under the Central Act are made calculable at the rates applicable to the sale or purchase of the relevant goods inside the appropriate State. Therefore, with regard to transactions coming u/s 8(2) and (2A) of the Central Act, the rates of tax are those which the appropriate State charges on the sales or purchases of those goods inside that State with regard to transactions other than sales in the course of inter-State trade or commerce. Then the question arises with regard to sales that take place in this State in the course of inter-State trade or commerce what are the rates of tax applicable, namely, whether the rates that are mentioned in Section 5 of the State Act only or those rates coupled with the additional one-fourth per cent tax as provided u/s 5-A of the Act."

(emphasis supplied).

14. The question was answered: With regard to goods relating to turnovers that come u/s 5-A, the rates of tax are those mentioned u/s 5 plus the one-fourth per cent additional tax as provided u/s 5-A. In *Addepalli Surya Ramachandra Rao and Co. Vs. The State of Andhra Pradesh and Others*, similar reasoning was adopted. The following passage indicates the reasoning:

Though the additional tax on turnovers of rupees three lakhs or more is imposed under a separate provision u/s 5-A, it is merely a supplemental or ancillary provision to the main charging Section 5. In ascertaining the true nature and character of the additional tax u/s 5-A it is legitimate as well as necessary that both the sections should be read together in order to ascertain the true character of the tax sought to be imposed. We are satisfied that the tax sought to be imposed u/s 5 as well as the additional tax sought to be imposed u/s 5-A partake of the same character.

15. The two decisions are an instance "of plus" for ascertainment of rate. In the instant cases, under explanation III of the Third Schedule, the tax paid on paddy is to be reduced. The tax when reduced it cannot then be said paddy and rice are taxed at the same rate. In the decision in *The State of Andhra Pradesh Vs. Oruganti Venkateswarlu and Bros. and Others*, Section 8(2A) of the Central Act 74 of 1956 was considered when under the First Schedule of the Andhra Pradesh State Act 6 of 1957 inter-State sales of rice obtained from paddy suffered was three per cent, the tax exempted was at one per cent and not at two per cent. Having considered Section 8(2A) of the Central Act it was held:

The question is what is meant by the words "subject to tax generally" and whether that term excludes from the purview rice obtained from paddy that is made taxable under the Act at 3 nP. in the rupee. In our view, it cannot be so excluded, because the rate is generally applicable to goods which are sold or purchased in the course of inter-State sale by a dealer, who has been defined as any person who carries on the business of buying, selling, supplying or distributing goods directly or otherwise. Dealers who deal in rice either purchase paddy directly from the agriculturist or import it, mill it and sell it outside the State, or buy paddy in the market which is already subjected to sales tax, mill it and sell it outside the State. When paddy already subjected to sales tax and paddy not so subjected is milled and dealers sell it outside the State, the cost to them would be different if the sales tax is levied at the uniform rate of two per cent, i.e., the rice milled from paddy which is already subjected to three per cent sales tax would cost more. There would thus be a case of discrimination in respect of the same end-product, viz., rice. Where there are two interpretations possible for a court to take, one against the constitutionality of the provision and the other in favour of sustaining it, the interpretation which favours the latter is the one which the courts must adopt.

16. The above decision, in our view, concludes the two contentions raised by the State Government in the instant cases and the decision holds good, for in the amending Acts to the State Act 6 of 1957 and to the Central Act 74 of 1956 no change has been brought to take any contrary view of the question raised.

17. Thus Section 8(2A) and Section 15(b) and (c) of the Central Act 74 of 1956 read together and juxtaposed with items 21 and 22 of the State Act 6 of 1957, explanation III in the Third Schedule, in our view, the same conclusion follows to hold tax on rice involved in the inter-State trade procured out of paddy which suffered the State tax has to be reduced. Sri N.K. Acharya, the learned counsel on behalf of some of the dealers, however, maintained that paddy and rice are not different commodities under the State Act 6 of 1957 or under the Central Act 74 of 1956. The common question at issue recited in the beginning, the learned counsel argued, arises only in the alternative, otherwise the learned counsel urged the main issue is dealers "are not liable to pay any purchase/sales tax in respect of paddy purchased by them". The plea thus raised and so stated is rather extravagant. To urge paddy and rice are not two different commodities

under the sales tax laws of the country at this distance of time is failure to see the obvious for such a contention is no more *res Integra*. The method of construction of items (or goods) under the sales tax laws with reference to the botanical name and meaning in the dictionary is no more considered a correct method and for long has been discarded. Betel leaves were construed from the standpoint of "popular sense" and held different from "vegetables" though from the standpoint of botanical name is the same as vegetables *Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola*, Hydrogenated oil in "commerce" notwithstanding the chemical changes was held to be groundnut oil (*Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool*, Sugar in State of Gujarat v. *Sakarwala Brothers* [1967] 19 S.T.C. 24 (S.C.) was held as patasa, harda and alchidana despite the chemical changes. "Coal" was held to include "charcoal" from the standpoint of "ordinary parlance" (*Commissioner of Sales Tax, Madhya Pradesh, Indore v. Jaswant Singh Charan Singh* [1967] 19 S.T.C. 459 (S.C.)). Cotton was "commercially" not to include though in natural growth included cotton-seeds (*State of Punjab and Others Vs. Chandu Lal Kishori Lal and Others*, Bars, flats and plates made out of scrap iron in the market were "identified" to be "iron and steel" [*State of Madhya Bharat (Now The State of Madhya Pradesh) and Others Vs. Hiralal Ji*, . Thus goods (items) were construed from the standpoint of "popular sense" and from the standpoint of "identification" and in "commercial sense", not from the meaning in dictionaries. Dehusked paddy may be is rice. The commodities may have common botanical name (*Oryza sativa* L). The two items (paddy and rice), items 21 and 22 in the State Act 6 of 1957 were held in *Ganesh Trading Co., Karnal Vs. State of Haryana and Another*, as two different items by the Supreme Court and in that sense is no more open to be questioned, therefore the contention of Sri N. K. Acharya cannot be countenanced.

18. In the result, having regard to the provisions in Section 8(2A), Section 15(c) of the Central Act 74 of 1956, item 22 read with explanation III in the Third Schedule of the State Act 6 of 1957 "paddy" out of which rice is procured involved in inter-State trade, we hold tax paid on paddy is liable to be (reduced) reimbursed. The writ petitions are allowed with the directions indicated above and for the costs we make no order. Advocate's fee Rs. 150 in each.