(1975) 11 AP CK 0013

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7516 of 1973

Alladi Venkateswarlu and Others — APPELLANT

Vs

Government of A.P. and Another — RESPONDENT

Date of Decision : 04-11-1975

Acts Referred:
Andhra Pradesh General Sales Tax Act, 1957 — Section 5(1), 5(2)(b), 66(b)

Citation : (1976) 37 STC 375

Hon'ble Judges : Chennakesava Reddy, J

Bench : Single Bench

Advocate : A. Lakshminarayana, for the Appellant; Government Pleader for Commercial Taxes, for the Respondent

Judgement

Chennakesava Reddy, J.—The short but interesting question that arises in this writ petition is: Whether sales tax on the sale of powa, muramura and pelalu is leviable u/s 5(1) of the Andhra Pradesh General Sales Tax Act, hereinafter referred to as the Act, or u/s 5(2)(b) read with item 66(b) of the First Schedule of the Act.

2. The facts are neither disputed nor complicated: The petitioners are dealers in foodgrains particularly dealing in powa, muramura and pelalu (beaten, parched and puffed rice) under a valid and subsisting licence issued under the Andhra Pradesh Foodgrains Dealers Licensing Order, 1964.

3. The petitioners purchase paddy and manufacture powa, muramura and pelalu. Tax is paid on the purchase of paddy at the point of first purchase in accordance with Section 5(2)(b) read with entry 8 of the Second Schedule of the Act. It appears, the Government of Andhra Pradesh through G.O. Ms. No. 208 Rev. (S) dated 21st March, 1973, withdrew the exemption given earlier in G.O. Ms. No. 2197 dated 19th December, 1961, exempting the collection of any sales tax on powa, muramura and pelalu. Consequently, notice dated 23rd November, 1973, was issued by the Deputy Commercial Tax Officer, Janagam, to all the dealers in powa, muramura and pelalu including the petitioners demanding payment of

sales tax immediately at the rate of 3? per cent for the sales effected from 1st April, 1973. The petitioners represented, but in vain to the authorities, that they were not liable to pay any sales tax on the sale of powa, muramura and pelalu. They have now filed this writ petition seeking a writ of mandamus interdicting the respondents, viz., the State Government and the Deputy Commercial Tax Officer, Janagam, from collecting any sales tax from the petitioners on the sales of powa, muramura and pelalu.

4. The only question debated before me was: Whether sales tax could be levied, on the facts and circumstances of the case, u/s 5(1) of the Act or u/s 5(2) read with entry 66(b) of the First Schedule of the Act. It is, therefore, necessary to read the relevant provisions:

5. Levy of tax on sales or purchases of goods.--(1) Every dealer (other than a casual trader and an agent of a non-resident dealer) whose total turnover for a year is not less than Rs. 15,000 and every agent of a nonresident dealer, whatever be his turnover for the year, shall pay a tax for each year at the rate of three paise on every rupee of his turnover. Every casual trader shall pay a tax at the rate of three paise on every rupee of his turnover:

Provided that if and to the extent to which such turnover relates to articles of food or drink or both sold in a hotel, boarding house, restaurant, stall or any other place for consumption on the premises and if the total turnover relating to these articles is not less than Rs. 40,000 for the year, the tax shall be calculated at the rate of three paise in the rupee, on the first Rs. 39,999 and at the rate of four paise in the rupee on the balance of the turnover.

(2) Notwithstanding anything contained in Sub-section (1), the tax under this Act shall be levied--

(a) in the case of the goods mentioned in the First Schedule at the rates and only at the point of the sale specified as applicable thereto, effected in the State by the dealer selling them, on his turnover of sales in each year relating to such goods irrespective of the quantum of turnover;

(b) in the case of the goods mentioned in the Second Schedule, at the rates and only at the point of the purchase specified as applicable thereto, effected in the State by the dealer purchasing them, on his turnover of purchase in each year relating to such goods irrespective of the quantum of turnover.

(3) ...

(4) The taxes under this section shall be assessed, levied and collected in such manner, as may be prescribed:

Provided that--

(i) in respect of the same transaction, the buyer or the seller, but not both, as determined by such rules as may be prescribed shall be taxed;

(ii) where a dealer has been taxed in respect of the purchase of any goods in accordance with the rules referred to in Clause (i) of this proviso, he shall not be taxed again in respect of any sale of such goods effected by him."

5. Under the Second Schedule of Section 5(2)(b) of the Act under entry 8, 5 paise in the rupee is the rate of tax fixed on paddy at the point of first purchase in the State. Under the First Schedule to Section 5(2)(a), entry 66(a) provides that rice not covered by sub-item (b) is taxable at the rate of 6 paise in the rupee at the point of sale by the first wholesale dealer in the State effecting sale, provided that a rebate of 2 paise in the rupee shall be allowed on the rice sold and consumed in the State in accordance with such rules as may be prescribed. Sub-item (b) stipulates that rice obtained from paddy that has met tax under the Act is taxable at the rate of 1 paisa in the rupee at the point of sale by the first wholesale dealer in the State effecting the sale. The question, therefore, is whether powa, muramura and pelalu are also products obtained from paddy and are liable only to tax under item 66(b). It is also evident that the Government under the G.O. Ms. No. 2197 Rev. dated 19th December, 1961, had totally exempted collection of any sales tax on the sale of powa, muramura and pelalu. Apparently they are considered as products of paddy obtained without undergoing any chemical process. I do not, therefore, think that any tax can be levied u/s 5(1) of the Act thereby permitting multipoint tax. However, as I have said that they are products of paddy they fall under item 66(b) and, therefore, sales tax can be levied on the sale of these goods, viz., powa, muramura and pelalu as provided under entry 66(b) of the First Schedule. A mandamus shall, therefore, issue to the respondents to levy and collect sales tax on the petitioners on the sale of powa, muramura and pelalu in accordance with entry 66(a) or (b), as the case may be, depending on the condition that tax at the purchase point of paddy has already been paid or not u/s 5(2)(b) of the Act. The writ petition is allowed to the extent indicated above. No costs. Advocate''s fee Rs. 100.