

(1978) 12 AP CK 0005

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 79 of 1977

Anjan Trading Company

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 22-12-1978

Acts Referred:

Central Sales Tax Act, 1956 — Section 14
Constitution of India, 1950 — Article 136

Citation : (1979) 44 STC 185

Hon'ble Judges : A. Sambasiva Rao, C.J.; Ramanujulu Naidu, J

Bench : Division Bench

Advocate : S. Dasaratharama Reddi, for the Appellant; Government Pleader for Commercial Taxes, for the Respondent

Final Decision : Dismissed

Judgement

Ramanujulu Naidu, J.—The petitioner in the above tax revision case, preferred against the order of the Sales Tax Appellate Tribunal, Andhra Pradesh, Hyderabad, in T.A. No. 29 of 1977 on its file, is a dealer in coriander, among other goods, at Guntakal. From the assessment year. 1975-76, the petitioner was assessed to tax at the rate of four paise in the rupee under item 9 of the Second Schedule to the Act by the Commercial Tax Officer, Guntakal, on a turnover of Rs. 12,74,997, being the total value of first purchases of coriander effected by him in the State, among other items of turnover, which need not be detailed for the purpose of disposal of the above revision case. On appeal, the assessment was confirmed by the Assistant Commissioner (CT), Appeals, Kurnool, by her order dated 28th December, 1976. The order of the Assistant Commissioner was unsuccessfully challenged before the Appellate Tribunal.

2. The legality of levy of tax on the turnover of coriander at the point of first purchase under item 9 of the Second Schedule to the Act was assailed before the Tribunal on two grounds. Firstly, it was urged that coriander was an oil-seed within the meaning of item 3 of the Third Schedule to the Act read with Section

14(vi) of the Central Sales Tax Act, 1956, that coriander was, therefore, one of the declared goods and that the turnover of coriander having suffered tax under the Central Sales Tax Act, the tax levied and collected under the Andhra Pradesh General Sales Tax Act was liable to be refunded. Secondly, it was contended that in case coriander was not held to be an oil-seed, the turnover was exigible to tax at multi-point sale as any of the general goods and not at the point of first purchase. Before us, the Learned Counsel for the petitioner gave up the first contention and, in our opinion, very rightly.

3. Before we appreciate the second contention put forward before the Tribunal and reiterated before us, it is necessary to notice the relevant provisions in the Andhra Pradesh General Sales Tax Act and the Central Sales Tax Act that have a bearing on the question for decision.

4. u/s 5(1) of the Andhra Pradesh General Sales Tax Act, every dealer, whose total turnover for a year is not less than Rs. 25,000, shall pay a tax for each year, at the rate of four paise on every rupee of his turnover and the tax is levied either at the point of sale or purchase as set out in the schedules appended to the Act. u/s 5(2)(b) of the Act, the tax is levied, 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. "Coriander" is included as item 9 of the Second Schedule and the tax is leviable at the point of first purchase in the State at the rate, of four paise in the rupee. Section 6 of the Act provides that in respect of declared goods a dealer is liable to tax at the rate and only at the point of sale or purchase specified against each in the Third Schedule to the Act. "Declared goods" are defined in Section 2(f) of the Act as meaning goods declared u/s 14(vi) of the Central Sales Tax Act to be of special importance in inter-State trade or commerce. In Section 2(c) of the Central Sales Tax Act, the same definition is incorporated. Section 14(vi) of the Central Sales Tax Act enumerates certain goods to be of special importance in inter-State trade or commerce. Item (vi) thereof, as amended by Act No. 61 of 1972, which came into effect on 1st April, 1973, runs thus:

(vi) Oil-seeds, that is to say,--

(i) Groundnut or Peanut (*Arachis hypogaea*);

(ii) Sesamum or Til (*Sesamum orientate*);

(iii) Cotton seed (*Gossypium Spp.*);

(iv) Soyabean (*Glycine soja*);

(v) Rapeseed and Mustard--

(1) Toria (*Brassica campestris var toria*);

(2) Rai (*Brassica juncea*);

- (3) Jamba--Taramira (*Eruca Satiya*);
- (4) Sarson, yellow and brown (*Brassica campestris* var *sarson*);
- (5) Banarsi Rai or True Mustard (*Brassica nigra*);
- (vi) Linseed (*Linum usitatissimum*);
- (vii) Castor (*Ricinus communis*);
- (viii) Coconut (i.e., Copra excluding tender coconuts) (*Cocos nucifera*);
- (ix) Sunflower (*Helianthus annus*);
- (x) Nigar seed (*Guizotia abyssinica*);
- (xi) Neem, vepa (*Azadirachta indica*);
- (xii) Mahua, illupai, Ippe (*Madhuca indica* M. *Latifolia*, *Bassia*, *Latifolia* and *Madhuca longifolia* syn. *M. Longifolia*);
- (xiii) Karanja, Pongam, Honga (*Pongamia pinnata* syn. *P. Glabra*);
- (xiv) Kusum (*Schleichera oleosa*, syn. *S. Trijuga*);
- (xv) Punna, Undi (*Calophyllum inophyllum*);
- (xvi) Kokum (*Carcinia indica*);
- (xvii) Sal (*Shorea robusta*);
- (xviii) Tung (*Aleurites fordii* and *A. montana*);
- (xix) Red palm (*Elaeis guinensis*);
- (xx) Safflower (*Carthamus tinctorius*).

Prior to the amendment effected by Act No. 61 of 1972, Section 14(vi)(vi) of the Central Sales Tax Act read thus:

(vi) Oil-seeds, that is to say, seeds yielding non-volatile oils used for human consumption, or in industry, or in the manufacture of varnishes, soaps and the like, or in lubrication, and volatile oils used chiefly in medicines, perfumes, cosmetics and the like.

5. Item 3 of the Third Schedule to the Andhra Pradesh General Sales Tax Act covering oil-seeds, as it stood prior to the amendments effected by Act No. 4 of 1974, which came into force from 1st April, 1973, was couched in the same language as item (vi) of Section 14(vi) of the Central Sales Tax Act, as it stood prior to its amendment by Act No. 61 of 1972. In conformity with the amendment of item (vi) of Section 14(vi) of the Central Sales Tax Act, effected by Act No. 61 of 1972, which came into effect on 1st April, 1973, item 3 of the Third Schedule to the Andhra Pradesh General Sales Tax Act was amended by the State Act No. 4 of 1974, which came into force on 1st April, 1973. Under the

amended item 3 of the Third Schedule to the Andhra Pradesh General Sales Tax Act, except castor, coconut, groundnut or peanut and cotton seeds, the rest of the oil-seeds specifically enumerated in item (vi) of Section 14(vi) of the Central Sales Tax Act, are listed. Castor, coconut, groundnut or peanut and cotton seeds are included as items 4, 5, 6 and 6-A of the same schedule. It may be noted that neither u/s 14(vi) of the Central Sales Tax Act nor in the Third Schedule to the Andhra Pradesh General Sales Tax Act, coriander is included as one of the "declared goods". Sections 6, 8 and 9 of the Central Sales Tax Act govern the levy of tax on inter-State sales of "declared goods". A reading of the provisions contained therein makes it clear that if any goods are declared to be goods of special importance u/s 14(vi) of the Central Sales Tax Act, by virtue of Sections 8 and 9 of the said Act, the sale of "declared goods" in the course of inter-State trade or commerce is exigible to tax under the Central Sales Tax Act to the extent and in the manner provided under the Andhra Pradesh General Sales Tax Act. If the goods are so assessed to tax and the tax has been collected, the tax, if levied and collected under the Andhra Pradesh General Sales Tax Act, is liable to be refunded u/s 15(b) of the Central Sales Tax Act read with the proviso to Section 6 of the Andhra Pradesh General Sales Tax Act.

6. Though, before the Appellate Tribunal, it was contended on behalf of the petitioner that coriander was an oil-seed within the meaning of item 3 of the Third Schedule to the Andhra Pradesh General Sales Tax Act read with Section 14(vi) of the Central Sales Tax Act, the Learned Counsel for the petitioner, advisedly, has not pressed the contention, inasmuch as the lists of oil-seeds enumerated in Section 14(vi) of the Central Sales Tax Act and specified under item 3 of the Third Schedule to the Andhra Pradesh General Sales Tax Act are exhaustive and coriander does not find a place in either of the lists. What is, however, urged by the Learned Counsel for the petitioner is that in the decision in *State of Orissa v. Dinabandhu Sahu and Sons*¹, their Lordships of the Supreme Court, while construing Section 14(vi) of the Central Sales Tax Act, declared that coriander was an oil-seed, that, consequent upon the decision of the Supreme Court, item 9 relating to coriander and included in the Second Schedule to the Act should be deemed to be non est and that the disputed turnover of coriander is not liable to tax at the point of first purchase, but exigible to tax at multi-point sales as any of the general goods.

7. In the case decided by the Supreme Court, Section 14(vi) of the Central Sales Tax Act, as it stood prior to the amendment effected by Act No. 61 of 1972, was considered. The Assistant Sales Tax Officer, Cuttack, included in the turnover of the assessee in the said case, the sale price of jeera, dhania (coriander), panmohuri, methi, postak and pipali and levied sales tax under the Orissa Sales Tax Act at 5 per cent of the turnover. On appeal, the Assistant Commissioner of Sales Tax, Puri, allowed the claim of the assessee and held that the above items were "oil-seeds" within the meaning of Section 14(vi) of the Central Sales Tax Act and gave the assessee the benefit of a lower tax of 2 per cent on the turnover of sale of those goods instead of 5 per cent under the State Act. On

appeal by the State of Orissa to the Sales Tax Tribunal, the order of the Assistant
(1) The State of Orissa Vs. Dinabandhu Sahu and Sons,

8. Commissioner was confirmed. In confirming the order of the Assistant Commissioner, the Sales Tax Tribunal of Orissa relied upon a notification of the Government of India dated 31st January, 1958. On a reference made to the High Court of Orissa by the Tribunal u/s 24 of the Orissa Sales Tax Act, at the instance of the State of Orissa, for its opinion, the order of the Tribunal was confirmed. Relying upon the decision of the Andhra Pradesh High Court in *State of Andhra Pradesh v. Kajjam Ramachandraiah Gad Anantaiah* [1961] 12 S.T.C. 795 the decision in *Commissioner of Sales Tax, Madhya Pradesh, Indore v. Bakhat Rai and Company* [1966] 18 S.T.C. 285 and the decision in *Deputy Commissioner of Agricultural Income Tax and Sales Tax v. Sreedhara Shenoy* [1973] 32 S.T.C. 181 it was urged on behalf of the State of Orissa that coriander was not an "oil-seed" within the meaning of Section 14(vi) of the Central Sales Tax Act. In arriving at the decision, the Andhra Pradesh High Court relied upon a letter from the Director of the National Chemical Laboratory, Poona, dated 29th January, 1959, addressed to the Secretary, Council of Scientific and Industrial Research, New Delhi, as also upon another letter from the Central Food Technological Research Institute, Mysore, dated 18th February, 1959. Adverting to the rival contentions put forward, the Supreme Court observed thus:

These appeals arise out of a decision in a reference u/s 24 of the State Act under Article 136 of the Constitution and we have to consider whether it is a fit case for interference with the order of the High Court when it held that the Sales Tax Tribunal was right in its conclusion. It is true the High Court has rightly observed that the aforesaid notification of the Government of India has no statutory force and as such is not binding on the Sales Tax Officer. It cannot, however, be denied that the Ministry of Finance, Department of Economic Affairs, is intimately conversant not only with the policy of legislation for the purpose of implementation of the provisions of the Central Act but is also familiar with the nature and quality of the commodities as also their use from time to time. If, therefore, such an authority issued a notification including certain commodities under the head of "oil-seeds" as defined under the Central Act, it cannot be said that the Tribunal and the High Court were not right in preferring such an opinion of the Government as good evidence for its conclusion, to the opinions relied upon by the Andhra Pradesh High Court on which great reliance has been placed by the appellant. A perusal of the contents of the letters referred to in the judgment of the Andhra Pradesh High Court would indicate that the opinions cannot be said to be very firm or even final. Apart from this, it is not known whether all the uses which are mentioned in the definition of "oil-seeds" were brought to the notice of the National Chemical Laboratory, Poona, and of the Central Food Technological Research Institute, Mysore, in rendering their opinions. If, therefore, the Tribunal, in the facts and the circumstances of the case, held that the particular commodities came within the definition of Clause (vi) of Section 14(vi) of the Central Act, it is not possible to hold that it was not

right.

9. It may be thus noted that their Lordships of the Supreme Court did not positively lay down that coriander was an "oil-seed" within the meaning of Section 14(vi) of the Central Sales Tax Act, as it stood prior to the amendment effected by Act No. 61 of 1972. Their Lordships of the Supreme Court merely held, having regard to the scope of the reference u/s 24 of the Orissa Sales Tax Act and the exercise of jurisdiction under Article 136 of the Constitution, that it was not possible to hold that the decision reached by the Sales Tax Tribunal, Orissa, on the material placed before it, that the particular commodities came within the definition of Clause (vi) of Section 14(vi) of the Central Sales Tax Act was not right.

10. In any event, the decision of the Supreme Court relied upon by the Learned Counsel for the petitioner is of no assistance to him as Section 14(vi) of the Central Sales Tax Act, as it stood prior to the amendment effected by Act No. 61 of 1972, was construed in the said decision. Admittedly, in the exhaustive list of oil-seeds enumerated under the amended Section 14(vi) of the Central Sales Tax Act, which alone governs the assessment in question, coriander is not included. The submission of the Learned Counsel for the petitioner that, by reason of the decision of the Supreme Court relied upon, entry 9 relating to coriander and included in the Second Schedule, should be deemed to be non est is untenable as the said entry or any entry in the Orissa Sales Tax Act corresponding to the said entry was not struck down by the Supreme Court. Entry 9 of the Second Schedule to the Act relating to coriander not being dead by reason of the decision of the Supreme Court, the question of its non-revival under the doctrine of eclipse enunciated in *Mahendra Lal Jaini v. State of Uttar Pradesh*¹ does not arise.

11. We must also observe that the unreported decision of *Madhava Reddy, J., in Darapureddi Venkanna v. Commercial Tax Officer, Amalapuram W.P. No. 366 of 1967* (Andhra Pradesh High Court, and the decision of a Division Bench of the High Court of Andhra Pradesh in *Tagoob Mohammad of Kanchili v. Commercial Tax Officer, Srikakulam* [1971] 28 S.T.C. 110, cited by the Learned Counsel for the petitioner, are also of no assistance as, in both the cases, watery coconuts were held to be "oil-seeds" answering the description of the same as set out in Section 14(vi) of the Central Sales Tax Act, as it stood prior to the amendment effected by Act No. 61 of 1972.

12. We, therefore, hold, agreeing with the Sales Tax Appellate Tribunal, that the disputed turnover of coriander was rightly assessed to tax at the point of first purchase under item 9 of the Second Schedule to the Act. The tax revision case, therefore, fails and is accordingly dismissed with costs. Advocate's fee Rs. 150.