(2001) 05 AP CK 0003

In the Andhra Pradesh High Court

Case No : TRC No''s. 89 of 1994 and 90 of 1994 and WP No. 32154 of 1998

A.P. Products, Hyderabad APPELLANT

Vs

State of Andhra Pradesh RESPONDENT

Date of Decision : 08-05-2001

Acts Referred:
Spices Board Act, 1986 — Section 2

Citation : (2001) 4 ALD 161 : (2001) 4 ALT 307

Hon'ble Judges : G. Bikshapathy, J;B. Subhashan Reddy, J

Bench : Division Bench

Advocate : Mr. Anand Swarup, Party in-Person, for the Appellant;

Judgement

B. Subhashan Reddy, J

1. These TRCs and in all writ petition raise a common point with regard to the imposition of sales tax on the sale of the spices.

2. TRCs have been filed against the orders of the Sales Tax Appellate Tribunal rejecting the contention of the petitioner that the kind of Masala powder he prepares after grinding spices like Jeera, Menthi, Dhaniya, Sajeera, Dry Ginger etc., is not a fresh product, but a mixture of the products, which had already suffered sales tax and the sales tax on the said items being single point, the Masala powder, which is nothing but the reflecting of the said taxed goods is not further exigible to sales tax.

3. The petitioner purchase various ingredients like Jeera, Menthi, Dalchina, Khaskhas, Sahjeera etc., from registered dealers in the State of Andhra Pradesh and the said items are subjected to sales tax at Entry No. 182 of I Schedule to the APGST Act. All the said items are called spices. The said taxed spices are added together and ground and the resultant product is the Masala powder used for culinary purposes for adding more taste to the food. The petitioner filed returns for the assessment years 1990-91, 1991-92, 1992-93 claiming exemption on the ground that the ingredients used for the preparation of Masala

powder have already been taxed under Entry 182 of I Schedule to APGST Act and as the said ingredients are chargeable only at the first sale point, the Masala powder is not exigible to further sales tax. But, the said contention was not accepted by the Commercial Tax Officer, the 2nd respondent herein and he had assessed Masala powder to tax, as a general good, as an item falling under VII schedule to APGST Act. The same was appealed against before the Appellate Deputy Commissioner, the 3rd respondent herein, but was rejected. Even further appeal to the Sates Tax Appellate Tribunal met the same fate and the result is the tax revision cases. Insofar as the writ petition is concerned, the complaint is that the revision filed by the petitioner before the 1st respondent ought not to have been rejected. The said revision has been preferred to stay the collection of disputed tax for the assessment year 1995-96 pending the disposal of the appeal before the Appellate Deputy Commissioner. By order dated 27-10-1998, the Joint Commissioner (CT) - Legal has dismissed the revision petition on the ground that STAT had already rejected the contention regarding, the non-exigibility of Masala powder to further sales tax and as such there was no question of grant of any stay.

4. Mr. Anand Swamp, the party-in-person submits that Masala powder is the result of grinding of various spices like Jeera, Menthi, Dalchina, Khaskhas, Sahjeera etc., and the said items were already subject to sales tax under APGST Act, 1957 and they being the items falling under Entry 182 of I Schedule to APGST Act and as the same attract the sales tax at the first sale. Masala powder, which is not a new product, but is only a combination of the above spices cannot against be subjected to sales tax. He takes us to the spices in different states like pepper. Cardamom (small), Cardamom (large). Chillies, Ginger, Turmeric, Garlic, Coriander, Cumin, Fennel, Clove, Nutmeg, Cinnamon. Tamarind, Sweet Flag, Ajwan seed, Saffron. Tejpatla etc., and also to the Spices Board Act, 1986 (a Central enactment). Section 2 (n) of the said Act defines as to what are the spices and those are what is stated above. The above enumerated spices have been stated by the party-in-person as known in common business parlance. The other provisions relates to the regulation of the spices for export and in some cases import. Cardamom is the main item in the said Act. That apart, certificate has to be obtained and the said certificate imposes some terms and conditions. But, all those are in no way concerned with the imposition of sales tax by the State under the State Act which is enacted under Entry 54 in List II of Schedule VII to the Constitution of India.

5. The main point to be considered is as to whether the goods, which according to the petitioner have already been subjected to sales tax as Item 182 of Schedule I appended to the Act, can be considered to subsist as it is, without undergoing any change and without loosing identification. To say concisely, whether the Masala powder is simple admixture of ingredients already suffered to sales tax or is it a new product by way of manufacture. By mixing several spices and grinding the same, the identification of the original spices is lost, thus emerging the new product which has been named by the petitioner as Masala

Powder. It cannot be known with certainty that the said masala powder is a combination of several spices and that such spices have been subjected to sales tax. By grinding several spices and making into single powder called "Masala Powder", there is a manufacturing process and as such it being not specified, is taxable as a general good as was done by the sales tax authorities. In fact, there is a direct judgment of Madhya Pradesh High Court in Sales Tax Commissioner v. Dhameja Home Industries 54 ITC 217. In the said case arising under the Madhya Pradesh Sales Tax Act, 1958, a similar contention was raised. Garam Masala was being made by the trader therein by mixing different condiments in certain proportion and the mixing may take place either before or after grinding of the condiments, which go to make the product "Garam Masala". Assessee''s contention that there was a mere mixture of condiments in grinding and that there was no manufacturing process was repelled by the Madhya Pradesh High Court and it was held that for preparation of Garam Masala, something more than grinding is necessary and that process of obtaining the product Garam Masala comes within the ambit of definition of ''manufacture'' and is exigible to sales tax.

6. In view of what is stated supra, we affirm the assessments made by the respondents. The TRCs are accordingly dismissed. Consequently, the writ petition also stands dismissed. No costs.