
(2008) 07 AP CK 0088

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 129 of 1997

Aruna Manure Works

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 15-07-2008

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 6A
Constitution of India, 1950 — Article 136, 141

Citation : (2009) 19 VST 402

Hon'ble Judges : T. Meena Kumari, J;Ramesh Ranganathan, J

Bench : Division Bench

Advocate : S.R. Ashok, for the Appellant; K. Raji Reddy, Special GP for Commercial Taxes, for the Respondent

Final Decision : Allowed

Judgement

Ramesh Ranganathan, J.—This revision is preferred against the order of the Sales Tax Appellate Tribunal (STAT), Hyderabad in T.A. No. 642 of 1993 dated 12.12.1994.

2. The petitioner is a dealer carrying on business in bone meal at Khammam. The Commercial Tax Officer, by order dated 20.3.1989, completed assessment for the year 1986-87 determining the net turnover of the assessee at Rs. 1,96,636/- duly granting him exemption on a turnover of Rs. 26,06,922-95. The said order was revised by the Deputy Commissioner (Commercial Taxes) and the turnover relating to bones, bone sinews and bone meal was brought to tax u/s 6-A of the A.P. General Sales Tax Act, (hereinafter referred to as "APGST Act"), on the ground that the aforesaid commodities, including crushed bones, were different from raw bones and that such purchases made from un-registered dealers was liable to tax.

3. Aggrieved thereby, the petitioner herein preferred an appeal and the STAT, by its order dated 12.12.1994 following the judgment of this Court in Subbaraju & Co. v. The State of Andhra Pradesh (1988) Vol. 7 APSTJ 116, rejected the appeal

holding that bone meal and bone sinews were independent commodities, that crushed bones, horns and hooves stood on the same footing as bone meal and bone sinews and as such were all liable to tax u/s 6-A of the APGST Act.

4. Sri S.R. Ashok, Learned Senior Counsel appearing for the revision petitioner would submit that the judgment of this Court in Subbaraju & Co (1988) Vol. 7 APSTJ 116 is no longer good law since the Supreme Court in A.A. Sulaiman v. Dy. Commissioner of Sales Tax (1997) Vol. 105 STC 324 (S.C.), in a matter arising u/s 5-A of the Kerala General Sales Tax Act, had noted with approval that the appeal preferred by the revenue against the judgment of the Madras High Court, in State of Tamil Nadu v. Subbaraj and Co. (1981) Vol. 47 STC 30, had been dismissed by the Supreme Court in S.L.P(C) Nos. 10810-11 of 1981 and 3481-83 of 1982 on July 30, 1984 and, therefore, Section 5-A of the Kerala General Sales Tax Act, (similar to Section 6-A of the APGST Act), was not attracted in cases where dry bones were converted into bone meal for sale as such in the market.

5. Learned Special Government Pleader for Commercial Taxes would, on the other hand, contend that the order of the Supreme Court, dismissing the S.L.P filed against the judgment of the Madras High Court in Subbaraj (1981) Vol. 47 STC 30 would not render the judgment of the Madras High Court, or that of the Kerala High Court, binding on this Court and it is only the judgment of this Court in Subbaraju & Co (1988) Vol.7 APSTJ 116 which continues to bind benches of co-ordinate jurisdiction. He would further contend that, since the counsel for the revision petitioner had conceded before the Tribunal that in view of the judgment of this Court in Subbaraju & Co (1988) Vol.7 APSTJ 116 he was not pressing the appeal regarding purchase of raw bones to the extent they were converted into bone meal and bone sinews, it was not open to the revision petitioner to urge the same contention or re-agitate the same issue before this Court.

6. Since the Judgment of the Madras High Court in Subbaraj (1981) Vol. 47 STC 30 (Mad), and the judgment of Supreme Court in A.A. Sulaiman (1997) Vol. 105 STC 324 (S.C.), arise u/s 7-A of the Tamilnadu General Sales Tax Act and Section 5-A of the Kerala General Sales Tax Act respectively, it is necessary to read these two provisions in juxta-position with Section 6-A of the APGST Act.

Section 5-A of the Section 7-A of Tamilnadu Section 6-A of APGST Kerala General Sales Tax General Sales Tax Act Levy of tax on turnover Act Levy of purchase tax Levy of purchase tax relating to purchase of certain goods

(1) Every dealer who, in (1) Subject to the Every dealer, who in the the course of his provisions of course of business: i) business, purchases from Sub-section (1) of Purchases any goods (the a registered dealer or Section 3, every dealer sale or purchase of from any other person who in the course of his which is liable to tax any goods, the sale or business purchases from under this Act) from a purchase of which is a registered dealer or registered dealer in liable to tax under this from any other person, circumstances in which Act, in circumstances in any goods (the sale or no tax is payable under which no tax is payable purchase of

which is Section 5 or under under Sub-section liable to tax under this Section 6, as the case (1), (3), (4) or (5) of Act) in circumstances in may be, or Section 5 and either- which no tax is payable ii) Purchases any goods (a) consumes such goods u/s 3 or 4, as (the sale or purchase of in the manufacture of the case may be, (not which is liable to tax other goods for sale or being a circumstance in under this Act) from a otherwise; or which goods liable to person other than a (b) uses or disposes of tax under subsection (2) registered dealer, and such goods in any manner of Section 3 or Section (a) consumes such goods other than by way of 4, were purchased at a in the manufacture of sale in the State; or point other than the other goods for sale or (c) despatches them to taxable point specified consumes them otherwise, any place outside the in Schedule I or or; State except as a direct Schedule II) and either, (b) disposes of such result of sale or (a) consumes or uses goods in any manner purchase in the course such goods in or for the other than by way of of inter-State trade or manufacture of other sale in the State, or commerce, shall, goods for sale or (c) despatches them to a whatever be the quantum otherwise, or place outside the State of the turnover relating (b) disposes of such except as a direct to such purchase for a goods in any manner or result of sale or year, pay tax on the other than by way of purchase in the course taxable turnover sale in the State, or of inter-State trade or relating to such (c) despatches or commerce, purchase for the year at carries them to a place Shall pay tax on the the rates mentioned in outside the State except turnover relating to Section 5. as a direct result of purchase aforesaid at sale or purchase in the the same rate at which course of inter-State but for the existence of trade or commerce, the aforementioned Shall pay tax on the circumstances, the tax turnover relating to the would have been leviable purchase as aforesaid at on such goods under the rate mentioned in Section 5 or Section Section 3 or 4, as the 6. case may be. 7. In the order under revision, the Tribunal observed that the petitioner had purchased raw bones from unregistered dealers and had subjected them to the required process thereby obtaining bone meal, bone sinews, crushed bones and horns and hooves, that on the sale of these commodities he had paid sales tax and that the Deputy Commissioner had subjected the purchase value of raw bones to tax u/s 6-A on the ground that such raw bones were consumed in the manufacture of goods like bone meal, bone sinews etc., which were altogether different products from the raw bones purchased by the petitioner and, therefore, the purchase value of raw bones was exigible to tax u/s 6-A of the Act. The Tribunal noted the appellant's contention that, as held by the Madras High Court in Subbaraj (1981) Vol. 47 STC 30 (Mad), there was no manufacturing process involved in obtaining bone meal, bone sinews, crushed bones and horns and hooves from the raw bones, that such commodities were not different from the raw bones purchased by him and, therefore, the purchase value of such raw bones could not be taxed u/s 6-A of the Act.

8. The Tribunal observed that the counsel for the assessee, during the course of arguments, had conceded that, in view of the judgment of this Court, in

Subbaraju & Co. (1988) 7 APSTJ 116, he was not pressing the appeal regarding purchase of raw bones to the extent they were converted into bone meal and bone sinews. The Tribunal further observed that purchase tax leviable under Section-7-A(1)(a) of the Tamilnadu General Sales Tax was similar to the provisions of Section 6-A of the A.P.G.S.T Act, that the judgment of the Madras High Court had been referred to and discussed by this Court in Subbaraju & Co. (1988)7 APSTJ 116, wherein the assessee had purchased raw bones from unregistered dealers and, after drying the bones, had got them crushed in a mill and had sold the resultant products, that though the judgment of this Court related only to bone meal and bone sinews, crushed bones, horns and hooves were also obtained from raw bones in the same manner in which bone meal and bone sinews were obtained and as such the observations made by this Court applied equally to crushed bones, horns and hooves. The Tribunal held that when raw bones are crushed they are consumed to bring into existence different goods namely crushed bones, horns and hooves as well as bone meal and bone sinews, that such goods are different in commercial and common parlance, that raw bones lose their identity and get consumed and, in their place, new commodities such as crushed bones, bone meal etc., emerge, that such new goods emerging from the consumed raw bones have higher utility than the raw bones which were consumed and they must be held as commercially different commodities from raw bones.

9. As is evident from the table extracted hereinabove, Sections 5-A of the Kerala General Sales Tax Act, Section 7-A of the Tamilnadu General Sales Tax Act and Section 6-A of the A.P.G.S.T. Act relate to the levy of purchase tax on goods purchased where such goods are consumed in the manufacture of other goods.

10. In Subbaraj (1981) Vol. 47 STC 30 (Mad), the Madras High Court held that the use of the word "consumes" contemplated that the goods purchased should have been devoured or exhausted in the process of manufacture with the result that the identity of the goods had been completely lost and, as long as the identity of the goods remained, the goods purchased and used in the manufacture of some other goods could not be said to have been consumed in the process of manufacture of other goods. The Madras High Court further observed that the raw bones purchased by the dealers could not be said to have been consumed in the process of bringing into existence crushed bones, bone grist, bone meal, fluff or horn hooves apart from the distinctive meaning that would have been attributed to the word "manufacture" and, consequently, with regards these purchases of raw bones, and the end-products which were sold locally, Section 7-A(1)(a) was not attracted as there had been no consumption of goods purchased in the manufacture of other goods. The SLP filed against judgment of the Division Bench of Madras High Court was dismissed by the Supreme Court in S.L.P.(C) Nos. 10810-11 of 1981 and 3481-83 of 1982 dated 30.7.1984.

11. In Subbaraju & Co. (1988) 7 APSTJ 116, the Division Bench of this Court,

relying on the judgment of the Division Bench of the Madhya Pradesh High Court in *Shaw Leiner Limited and Another Vs. Sales Tax Officer and Others*, , held that sinews and bone meal were commodities different from raw bones as understood in commercial circles, that there were different entries in the Schedule regarding bone and bone meal indicating the legislature's recognition of this distinction and that the Tribunal was right in holding that the assessee's turnover of purchase of raw bones to the extent it was consumed for the production of bone meal and sinews was liable to tax u/s 6-A(ii)(a) of the Act. The judgment of the Madras High Court in *Subbaraj (1981) Vol. 47 STC 30 (Mad)* was taken note of and this Court held that, in the judgment of the Madras High Court, the question whether sinews were commodities different from bones was not considered and it was not also clear whether bone meal was separately treated from bones under the Madras Act.

12. In *A.A. Sulaiman (1997) Vol. 105 STC 324 (S.C.)*, the question which fell for consideration was whether a dealer, who had purchased dry bones and had converted them into bone meal for sale as such in the market, could be said to be liable to pay purchase tax. The Supreme Court observed that the question had already been resolved in favour of the assessee, and against the revenue, by the decision of the Madras High Court in *Subbaraj (1981) Vol. 47 STC 30 (Mad)* and this decision of Madras High Court was holding the field since the Supreme Court had rejected the special leave filed questioning the correctness of the view taken in this case. The Supreme Court, in *A.A. Sulaiman (1997) Vol. 105 STC 324 (S.C.)*, saw no reason to take a different view and affirmed the issue in favour of the assessee.

13. It is true that dismissal of the SLP filed against the order of the High Court would not attract the doctrine of merger. (*K.S. Krishnaswamy v. Union of India 2006 (13) SCC 215*). The judgment of the Division Bench of the Madras High Court, in *The State of Tamil Nadu Vs. Subbaraj and Co.*, , therefore, cannot be said to have been affirmed by the Supreme Court merely because the SLP filed thereagainst was dismissed by the Supreme Court for it is well settled that dismissal of the SLP filed against the judgment of a High Court does not mean that the said judgment is affirmed by such dismissal. (*Sri Ramnik Vallabhdas Madhvani and Others Vs. Taraben Pravinlal Madhvani*,).

14. The fact, however, remains that the judgment of the Supreme Court, in *A.A. Sulaiman (1997) 105 STC 324 (S.C.)*, (Judgment in C.A. Nos. 561 to 564 of 1987 dated 20.03.1987), is evidently after special leave was granted. It must be borne in mind that once special leave has been granted, the door for the exercise of appellate jurisdiction of the Supreme Court is let open. Any order passed thereafter would be an appellate order and would attract the doctrine of merger. It would not make any difference if the order is a speaking or a non-speaking one. Under Article 136 of the Constitution, the Supreme Court may reverse, modify or affirm the judgment, decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction

disposing of the petition for special leave to appeal. The doctrine of merger can, therefore, be applied to the former and not to the latter. Once leave to appeal has been granted and the appellate jurisdiction of the Supreme Court has been invoked, the order passed in appeal would attract the doctrine of merger. (Kunhayammed and Others Vs. State of Kerala and Another, ; K.S. Krishnaswamy 2006 (13) SCC 215).

15. Since the Supreme Court in A.A. Sulaiman (1997) 105 STC 324 (S.C.) did not see any reason to take a view different from that of Madras High Court in The State of Tamil Nadu Vs. Subbaraj and Co., , the reasons given by the Madras High Court in the aforesaid judgment must be held to have merged in the order of the Supreme Court as the reasons for a decision can also be said to have merged in the order of the superior court if the superior court has, while formulating its own judgment or order, either adopted or reiterated the reasoning, or recorded an express approval of the reasoning, incorporated in the judgment or order of the subordinate forum. (S. Shanmugavel Nadar Vs. State of Tamil Nadu and Another,).

16. It must also be borne in mind that in cases where the Supreme Court does not dismiss the SLP but, after granting leave, decides the appeal finally by recording reasons such order can be said to be a judgment to which Article 141 of the Constitution applies. Likewise, the doctrine of merger also gets attracted. All orders passed by the courts/authorities below, therefore, merge in the judgment of the Supreme Court. (A.V. Papayya Sastry and Others Vs. Government of A.P. and Others,).

17. While the judgment of the Division Bench of this Court in Subbaraju & Co. (1988) 7 APSTJ 116 would no doubt bind benches of coordinate jurisdiction, the subsequent judgment of the Supreme Court in A.A. Sulaiman (1997) 105 STC 324 (S.C.), affirming the judgment of the Madras High Court in The State of Tamil Nadu Vs. Subbaraj and Co., , would necessitate the latter, and not the judgment of this Court in Subbaraju & Co. (1988) 7 APSTJ 116 being followed for it is well settled that the law declared by the Supreme Court binds all Courts in India (Rajeswar Prasad Misra v. State of W.B. AIR 1965 SC 1887). It is well to remember that, on the law having been declared by the Supreme Court, it is the duty of the High Court, whatever be its view, to act in accordance with Article 141 of the Constitution of India and to apply the law laid down by the Supreme Court. Judicial discipline to abide by the declaration of law, of the Supreme Court, cannot be forsaken by any Court, be it even the highest Court in a State, oblivious of Article 141 of the Constitution of India. (Chandra Prakash v. State of U.P. : (2002)IILLJ841SC ; State of Orissa Vs. Dhaniram Luhar,).

18. In Director of Settlements, Andhra Pradesh and Others Vs. M.R. Apparao and Another, the Supreme Court observed:

...Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The

aforesaid Article empowers the Supreme Court to declare the law. It is, therefore, an essential function of the Court to interpret a legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has "declared law" it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An "obiter dictum" as distinguished from a ratio decidendi is an observation by the Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a binding effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case. So far as constitutional matters are concerned, it is a practice of the Court not to make any pronouncement on points not directly raised for its decision. The decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court (see *Ballabhadas Mathurdas Lakhani and Others Vs. Municipal Committee, Malkapur*,). When the Supreme Court decides a principle it would be the duty of the High Court or a subordinate court to follow the decision of the Supreme Court. A judgment of the High Court which refuses to follow the decision and directions of the Supreme Court or seeks to revive a decision of the High Court which had been set aside by the Supreme Court is a nullity. (See *Narinder Singh Vs. Surjit Singh*,) and *Smt. Kausalya Devi Bogra and Others Vs. Land Acquisition Officer, Aurangabad and Another*,)

(emphasis supplied).

19. The Madras High Court, in *The State of Tamil Nadu Vs. Subbaraj and Co.*, , held that raw bones purchased by dealers cannot be said to have been consumed in the process of bringing into existence crushed bones, bone meal, fluff, horns and hooves and consequently, with regards purchase of raw bones and the end-products which are sold locally, Section 7-A(1)(a) of the Tamilnadu General Sales Tax Act, (similar to Section 6-A of the APGST Act), was not attracted as there had been no consumption of the goods purchased in the process of manufacture of other goods. In the order under revision, levy of tax u/s 6-A of the A.P.G.S.T Act on the purchase of raw bones, which were converted into crushed bones, bone meal, bone sinews, horns and hooves was in issue. As such, on the application the doctrine of merger, the judgment of the Supreme Court in *A.A. Sulaiman* (1997) 105 STC 324 (S.C.), approving the reasoning of the Madras

High Court, in *The State of Tamil Nadu Vs. Subbaraj and Co.*, would bind this Court and it must be held that raw bones are neither consumed nor is any process of manufacture involved in conversion of raw bones into crushed bones, bone meal, bone sinews, horns and hooves. Consequently purchase tax, u/s 6-A of the A.P.G.S.T. Act, cannot be levied on the purchase of raw bones by the assessee.

20. The only other question which remains to be examined is the consequence of the concession said to have been given before the Sales Tax Appellate Tribunal by the counsel for the revision petitioner. As noted above, the learned Counsel for the revision petitioner had conceded before the Tribunal that, in view of the judgment of this Court in *Subbaraju & Co.* (1988) 7 APSTJ 116, he was not pressing the appeal regarding purchase of raw bones to the extent they were converted into bone meal and bone sinews. The judgment of this Court held the field, and was binding not only on the S.T.A.T, but also on co-ordinate Benches of the High Court of A.P., till the subsequent judgment of the Supreme Court in *A.A. Sulaiman* (1997) 105 STC 324 (S.C.). It is useful to note that the judgment of the Supreme Court in *A.A. Sulaiman* (1997) 105 STC 324 (S.C.) is subsequent even to the order of the S.T.A.T. dated 12.12.1994. The judgment of the Division Bench of this Court in *Subbaraju & Co.* (1988) 7 APSTJ 116 was binding on the S.T.A.T. when the order under revision came to be passed and the counsel for the revision petitioner could not but have fairly stated that the issue was covered against the assessee by the judgment of the Division Bench of this Court. That, however, would not preclude the revision petitioner from challenging the correctness of the decision in *Subbaraju & Co.* (1988) 7 APSTJ 116 before this Court, or the Supreme Court, and contend that in view of the subsequent judgment of the Supreme Court in *A.A. Sulaiman* (1997) 105 STC 324 (S.C.), the earlier Division Bench judgment of this Court in *Subbaraju & Co.* (1988) 7 APSTJ 116 was no longer good law. Even otherwise, it is well settled that a concession by a counsel on a point of law does not bind his client and that such concession cannot constitute a just ground for a binding precedent (*B.S. Bajwa and Another Vs. State of Punjab and Others*, : *Uptron India Limited Vs. Shammi Bhan and Another*,). This contention of the learned Special Government Pleader must also fail.

21. The T.R.C. is, accordingly, allowed and the order of the Sales Tax Appellate Tribunal in T.A. No. 642 of 1993 dated 12.12.1994 and the revisional order of the Deputy Commissioner (C.T.) dated 02.04.1993 are set aside.