(1982) 11 AP CK 0021

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 17 of 1978

B. Rajendra Oil Mills Refinery APPELLANT

Vs

State of Andhra Pradesh RESPONDENT

Date of Decision : 22-11-1982

Acts Referred:
Andhra Pradesh General Sales Tax Act, 1957 — Section 22(1), 7A

Citation : (1986) 62 STC 72

Hon'ble Judges : Punnayya, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Judgement

Jeevan Reedy, J.—The assessee is a manufacturer of refined oil. For the assessment year 1970-71, the assessee claimed exemption on the purchase of groundnut oil on the ground that the sales effected by him are second sales. In other words, his case was that he purchased the groundnut oil from other dealers. He produced sale bills, way bills and other documents in support of his case. The assessing authority held that the dealers who are said to have effected the sales of groundnut oil in favour of the assessee are not registered dealers and also that the assessee had failed to prove that those dealers have paid to tax. Accordingly, it held that the assessee was liable to pay the tax. On appeal, the Assistant Commissioner granted relief in respect of 12 items out of 23 items. With respect to remaining 11 items, the Assistant Commissioner held that the registration numbers of the dealers from whom the assessee is said to have purchased the groundnut oil were not tallying with the correct registration numbers as per the records of the department. The registration numbers given in the bills, it was found, were not assigned to those particular dealers. On further appeal, the Sales Tax Appellate Tribunal, in an elaborate order, granted relief with respect in eight more items, but dismissed the appeal with respect to three items. We are concerned with only those three items, in respect of which the Sales Tax Appellate Tribunal dismissed the appeal.

2. As stated above, the assessee produced sale bills, way bills, weighment notes,

analysis reports and particulars of cheques issued to the sellers of the goods. The Tribunal found that the cheques issued to the dealers, from whom the assessee is said to have purchased the groundnut oil, were discounted by those dealers with brokers, without crediting the cheques into their accounts. The Tribunal further found that the registration number of the three dealers (with whom we are concerned in this revision) did not belong to them. To be more precise, the assessee claims to have purchased groundnut oil worth Rs. 2,72,724.45 from "Messrs Ramakrishna Oil Company" who issued sales bills showing his registration number as 2895, at Proddatoor. On a report being called, the C.T.O., Proddatoor, reported that registration No. 2895 was assigned to one Srinivasa Oil Trading Company, during the relevant year, and even that was cancelled in the year 1971. Similar is the case with respect to M/s. Bharath oil Merchants and M/s. Ramesh Oil Merchants, the two other dealers concerned herein. The Tribunal observed that the only piece of evidence furnished by the assessee to identify the sellers is found to be false and since there is no other evidence placed on record by the assessee to establish that he is a second seller, he is liable to pay tax.

3. Mr. P. Babul Reddy, the learned counsel for the assessee, contended that the Tribunal has failed to consider relevant material which has vitiated its finding. His contention is that the assessee, among other documents, has produced way bills issued by the said three dealers, which also bear the stamp of the check post. The way bills, according to the counsel, show that the goods were indeed transported from Proddatoor to Hyderabad. He contends that the assessee is a major manufacturer of refined oil whose turnover is in crores of rupees every year and that the he relied upon the bills and other documents produced before him at Hyderabad and purchased the stock. He further contends that if the Tribunal had considered the way bills, it could well have come to a different conclusion or at least have directed further enquiry to find out whether in fact the firms, M/s. Ramakrishna Oil Company, M/s. Bharath Oil Merchants and M/s. Ramesh Oil Merchants did exist or not, during that year, and whether they were registered dealers or unregistered dealers. He laid stress upon the observations of the Tribunal - with which we can have no quarrel - that the first seller need not be a registered seller. Counsel contended that merely because the registration number is found to be wrong, it does not follow that the dealer does not exist, and that further enquiry ought to have been made by the authorities or must have been directed to be made by the Tribunal, to find out whether such dealers did in fact exist or not during the relevant year.

4. We are unable to agree. Section 7-A of the Andhra Pradesh General Sales Tax Act, 1957 provides that the burden of proving that any sale or purchase effected by a dealer is not liable to tax, or is liable to be taxed at a reduced rate, lies upon the dealer. The groundnut oil is liable to be taxed on the first sale in the State. Therefore, it is for the assessee to prove that the sale effected by him is not the first sale, which means that he has to prove that the groundnut oil sold by him (after refining) was the oil purchased by him from another dealer,

whether registered or unregistered. This burden has to be discharged by the assessee-dealer only. To discharge this burden the assessee has produced sale bills, way bills, and the particulars of cheques issued by him to such sellers. So far as the sale bills are concerned, it was found that registration numbers mentioned therein did not belong to those dealers during the relevant assessment year. It is true that the Tribunal has not considered the way bills purporting to have been issued by the said three dealers. But we are not inclined to remand the matter to the Tribunal for arriving at a fresh decision after taking into consideration the said way bills, for the said way bills suffer from the same defect as the sale bills - namely, the wrong registration number. The Tribunal disbelieved the sale bills on the ground that the registration numbers of the dealers mentioned therein are false. On the same parity of reasoning, the way bills also are bound to be found false. Therefore, we do not see any purpose will be served by the sending the matter back to the Tribunal to reconsider the matter taking into consideration the way bills.

5. Now with respect to Mr. Babul Reddy''s argument that from the mere fact that the registration numbers mentioned in the sale bills are false, the authorities and the Tribunal were not justified in coming to the conclusion that such dealers do not exist, we must say firstly what whether a dealer exist or not, is a question of fact; we cannot go into the adequacy or otherwise of evidence. Secondly, it was never the case of the assessee that the said dealers were unregistered dealers. His case as put forward through the bills produced by him was that they were registered dealers bearing a particular registration number. When that case is found to be false, the assessee cannot turn round at this stage and say that even if the sellers are not registered dealers, they could well have been unregistered dealers and that the department ought to have made further enquiry to find out whether there were any unregistered dealers bearing that description. In this case, the assessee had ample opportunity to produce appropriate material both before the first appellate authority as well as before the Tribunal to show that dealer from whom he claims to have purchased the groundnut oil, do in fact exist. No such attempt was made by him at either appellate stage. In these circumstances, we are unable to say that the Tribunal has decided any question of law erroneously or that it has failed to decide any question of law within the meaning of section 22(1) of the Andhra Pradesh General Sales Tax Act, 1957.

6. We must also point out that the pro forma of the way bills prescribed by form No. 10 under the A.P. General Sales Tax Rules as in vogue during the assessment year 1970-71, is different from the pro forma which is now in vogue. During the assessment year 1970-71, the way bills were not issued by the assessing authority or by any sales tax authority to a particular dealer. These way bills could be procured by any dealer. Therefore, the way bills now produced to not prove that the consignor mentioned therein does in fact exist. Similarly the fact that the way bill was checked or stamped at the sales tax check post, does not equally prove, nor is relevant, on the question of existence or otherwise of the consignor. It could very well have happened that the consignee may himself have

purchased the groundnut oil at Proddatoor from the producers, and transported the goods, falsely showing a non-existing dealer as the cosigner. The checking authorities are not concerned and are not competent, to verify or enquire whether the consignor shown in the way bill is a real or genuine dealer or not. We are, therefore, of the opinion that the ways bills, which are now relied upon, are not relevant on the question of the existence or otherwise of the consignor from whom the assessee claims to have purchased the groundnut oil.

7. The circumstance that the assessee is a very big manufacturer, whose turnover is in crores of rupees every year and, therefore, the probability of his fabricating documents is almost nil, is a question touching upon the merits of the issue, which we cannot take into consideration. This factum may have been relevant and could have been taken into consideration by the assessing and appellate authorities, but merely because of the aforesaid probability. We cannot interfere with the finding of fact recorded by the Sales Tax Appellate Tribunal u/s 22(1) of the A.P. General Sales Tax Act.

8. Mr. Babul Reddy relied upon a decision reported in Bandamidi Rajaiah and Sons Vs. Board of Revenue, Commercial Taxes, to contend that the sales tax authorities were bound to enquire further whether the dealers from whom the assessee claims to have purchased the goods, do in fact exist or not, notwithstanding the fact that the the registration number mentioned by them in their bills was found to be false. We have perused the decision and we are of the opinion that the said decision does not lay down any such principle. That was a case where the assessee submitted a detailed list of registered dealers from whom he purchased the goods giving details as to the dates of purchase, names of the parties and their addresses, the bill numbers, quantity and the amount involved.

9. In spite of the furnishing of such details, the assessing authority made no verification of any of those particulars and yet negatived the claim for exemption put forward by the assessee. It was in those circumstances that the Bench of this Court observed that once the dealer furnishes the necessary information to show that the goods had suffered tax already at the point of first purchase, it is for the assessing authority to verify the correctness of the information furnished by the assessee. So far as the present case is concerned, there has been a good amount of enquiry and verification by the departmental authorities, on the basis of which, indeed, they have granted substantial relief to the assessee.

10. For the above reasons, the tax revision case fails and is dismissed. In the circumstances of the case, there shall be no order as to costs. Advocate''s fee Rs. 250.