
(1987) 02 AP CK 0003
In the Andhra Pradesh High Court
Case No : T.R.C. No. 40 of 1983

Batchu Venkataramanaiah and Co.

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 24-02-1987

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 5

Citation : (1988) 71 STC 166

Hon'ble Judges : M.N. Rao, J;K. Ramaswamy, J

Bench : Division Bench

Advocate : S.R. Ashok, for the Appellant; Government Pleader for Commercial Taxes, for the Respondent

Judgement

M.N. Rao, J.—This revision petition u/s 22 of the Andhra Pradesh General Sales Tax Act was filed by Batchu Venkataramanaiah & Company, a registered dealer under the Central Sales Tax Act (C.S.T. Act) carrying on business at Nellore, questioning the order of the Sales Tax Appellate Tribunal made in T.A. No. 872 of 1978 dismissing the appeal preferred by him. The assessment year relevant for this revision is 1975-76. During the assessment year 1975-76, the Commercial Tax Officer, Nellore assessed the petitioner (assessee) herein to tax under the C.S.T. Act on a turnover of Rs. 6,54,635.05. That order was carried in appeal by the assessee to the Assistant Commissioner unsuccessfully. In the second appeal before the Sales Tax Appellate Tribunal, the assessee filed an application to raise an additional ground contending that as an agent of ryots and also in his capacity as an agriculturist, he was not liable to tax on a turnover of Rs. 4,33,502 out of the disputed turnover of Rs. 6.38,928. The second contention raised by him was that u/s 8-A(1)(a), the formula prescribed for determination of the taxable turnover has not been applied by the assessing authority. The third contention advanced by him was that in respect of the turnover liable to tax under the C.S.T. Act, the additional tax u/s 5-A of the Andhra Pradesh General Sales Tax Act (A.P.G.S.T. Act) could not be added. The Tribunal did not go into the question of the application of the principle contained in section 8-A(1)(a) of the C.S.T. Act

for the purpose of determination of the taxable turnover. As regards the additional point sought to be raised by the assessee, the Tribunal held that in substance, the assessee was making an attempt to dispute the turnover and since the matter was covered by the decision of a Full Bench of this Court in State of Andhra Pradesh Vs. Sri Venkata Rama Lingeshwara Rice Mill and Others, it was not open to the assessee to dispute either turnover or rate of tax which was not disputed before the first appellate authority. On the question of computation of the additional rate of tax, by determining the rate of tax u/s 8(2-A) of the C.S.T. Act, the Tribunal negatived the plea of the assessee.

2. Sri Ashok, learned counsel for the assessee, raised the following two contentions before us. The first contention is that by raising an additional ground in respect of the turnover in dispute, the petitioner is not seeking to reopen any matter which became final at the stage of the Assistant Commissioner. In other words, the contention raised is that the plea taken by the assessee before the Sales Tax Appellate Tribunal was outside the rule laid down by the Full Bench in State of A.P. v. Venkata Rama Lingeshwara Rice Mill . The second contention urged is that the State of Andhra Pradesh Vs. Sri Venkata Rama Lingeshwara Rice Mill and Others, did not go into the question regarding the applicability of the formula contained in section 8-A(1)(a) for the purpose of determination of the taxable turnover of the assessee, although the contention was raised and therefore the matter has to be remitted to the Tribunal.

3. As regards the first point, we are of the view that the case of the assessee is not well-founded. The Full Bench of this Court in State of Andhra Pradesh Vs. Sri Venkata Rama Lingeshwara Rice Mill and Others, considered the question in extenso - whether it is open to an assessee to canvass the correctness of turnover, tax or rate of tax before the Sales Tax Appellate Tribunal without disputing the same before the first appellate authority. After noticing the relevant provisions of the law, the Full Bench ruled that :

"If the dealer had not objected to any part of the order of assessment even in his appeal before the Assistant Commissioner, it is impossible to say that he has any objection to that part of the order in the subsequent appeal before the Tribunal. All these provisions clearly indicate that the subject-matter of the appeal is the disputed turnover, tax or the rate of tax and nothing else. It follows therefore that if a dealer has not preferred an appeal against a particular part of the order of assessment and the Appellate Assistant Commissioner disposes of the appeal before him, the order passed on appeal is final subject only to the powers of the Tribunal u/s 21. There is nothing in section 19 or section 21 which enables the dealer to reagitate before the Appellate Tribunal matters which have become final before, by reason of his not having appealed against the order of the assessment."

4. There are no separate provisions in the C.S.T. Act regarding the machinery to work the Act. The relevant machinery provisions under the A.P.G.S.T. Act are applicable. The assessee had not raised the contention before the Assistant

Commissioner in the first appeal that a turnover of Rs. 4,33,502 was not liable to tax on the ground that it represented the business transacted by him in his capacity as an agent of ryots and as an agriculturist. If this contention is to be accepted, the result would be that the assessee would not be liable to pay the basic rate of tax at 2 per cent. and also the additional tax of 1/2 per cent. What he disputed before the first appellate authority was the exigibility of additional tax, but not the basic tax. Such situation was contemplated by the Full Bench when it ruled that the subject-matter of the appeal may be either disputed turnover, tax or the rate of tax and nothing else. By seeking to raise a new point before the Appellate Tribunal, the assessee, in effect, was disputing the exigibility to tax of a turnover of Rs. 4,33,502 which he did not dispute before the first appellate authority. Therefore, the Tribunal, in our view, rightly, negatived the request made by the assessee for permission to raise the additional ground. Sri Ashok, learned counsel for the assessee, contends that the observation of the Tribunal that there was no material on record to show that the assessee acted as an agent of the agriculturists, is factually incorrect, since the assessment order clearly shows that in respect of the transactions relating to ragi and bajra which are items 8 and 9 shown in the assessment order at page 2, it was clearly mentioned that the turnover related to "commission account on behalf of ryot-principals". It is true that in the assessment order, it was mentioned that in respect of ragi and bajra turnover, the assessee acted as a commission agent on behalf of the ryot-principals. The Tribunal negatived the request of the assessee to raise an additional plea on two grounds - one such plea was impermissible in view of the decision of the Full Bench of this Court in *State of Andhra Pradesh Vs. Sri Venkata Rama Lingeshwara Rice Mill and Others*, and that there was no material on record to show that he acted as an agent of agriculturists-principals. Since we hold that the Full Bench judgment of this Court precludes the assessee from raising an additional point, the observation made by the Tribunal that there was no record to show that the assessee was not the agent of ryot-principals is of no consequence.

5. So far as the second contention is concerned, we are of the view that the assessee must succeed. A specific plea was taken by the assessee that the formula contained in section 8-A(1)(a) of the C.S.T. Act in the determination of the taxable turnover has not been followed by the assessing authority. The first appellate authority negatived the plea of the assessee, but the Sales Tax Appellate Tribunal had not adverted to this aspect. It is within the province of the Sales Tax Appellate Tribunal as the final court of fact to go into these aspects and, therefore, we do not wish to embark upon an enquiry as to what would be the consequence of the application of the principle contained in section 8-A(1)(a) in the determination of the taxable turnover of the assessee.

6. For the foregoing reasons, the T.R.C. is allowed in part, the matter is remitted to the Sales Tax Appellate Tribunal with a direction to consider the case of the petitioner regarding the applicability of the formula contained in section 8-A(1)(a) to determine the net taxable turnover for the assessment year 1975-76. In

other respect, the T.R.C. is dismissed. There shall be no order as to costs. Advocate's fee Rs. 350.

7. Petition partly allowed.