
(1980) 08 AP CK 0003

In the Andhra Pradesh High Court

Case No : Tax Revision Case No's. 58 and 59 of 1977

C. Venkata Subbaiah and Co. and Another

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 12-08-1980

Acts Referred:

Citation : (1981) 47 STC 204

Hon'ble Judges : Alladi Kuppaswami, Acting C.J.; A. Seetharam Reddy, J

Bench : Division Bench

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

Judgement

Alladi Kuppaswami, Ag. C.J.

1. Though the assesseees are different in these two cases, it is admitted that the facts are similar. Hence it is sufficient to state the facts in one of them, viz., T.R.C. No. 58 of 1977. The facts are that the assessee while submitting his return for the year 1971-72 claimed exemption in regard to a turnover of Rs. 3,63,057.37 and Rs. 1,20,497.28 on the ground that they represented purchases of copra and watery coconuts which were again sold to other dealers within the State. The assessee therefore claimed that he was not the last purchaser in respect of these commodities and as tax was leviable only at the point of last purchase on these commodities, he was entitled to the exemption on the turnover relating to them. In support of his contention he produced a list of dealers to whom the copra and watery coconuts were sold. This list contained the bill number, the date of the sale, the amount for which it was sold. and the name and address of the purchaser. The assessee also produced daybook, ledgers, sales and purchase invoices before the Commercial Tax Officer, Proddatur, as is clear from column No. 7 relating to the documents produced in support of the return mentioned at the commencement of the order. The Commercial Tax Officer granted exemption to the extent of the sale covered by the list, viz., in a sum of Rs. 1,17,307.17. Nearly 4 years after the order of assessment, the Deputy

Commissioner of Commercial Taxes, Chittoor, initiated revision proceedings u/s 20 of the Act. In the order dated 29th October, 1976, it is stated that the dealers did not produce any recorded evidence before the assessing authority that the coconuts and copra purchased from dealers within the State was sold by them to registered dealers in the State. As the dealers did not prove that the persons who purchased the coconuts and copra from them were registered dealers and the goods suffered tax, he held that the assessee was the last purchaser in the State and the exemption allowed by the assessing authority was, therefore, irregular.

2. The Sales Tax Appellate Tribunal, Hyderabad, before whom an appeal was filed by the assessee, observed that there was considerable force in the submission made on behalf of the assessee that there was no justifiable basis for revising the order of the Commercial Tax Officer as the revisional authority has not brought to record any material whatsoever to justify initiation of suo motu revisional powers. Disagreeing with the finding of the assessing authority, the Tribunal went on to observe that, in rejecting the claim" of the assessee, the Deputy Commissioner only relied on the fact that the buyers were not registered dealers and that no evidence was adduced to establish that the goods had suffered tax in their hands and hence the assessee would be the last purchaser. The Tribunal stated : "No enquiry or verification was made by the assessing authority to establish the authenticity of the claim put forth by the appellant before granting exemption. The fact that the appellant had sold the goods to such dealers must be established beyond reasonable doubt before the claim can be entertained. The records do not shed any light on these aspects of the matter. In the circumstances, no definite opinion can be expressed on the basis of the material on record. The ends of justice demand that the matter should be examined de novo in all its aspects by the assessing authority before arriving at any final conclusion."

3. In this revision petition the learned counsel for the petitioner submits that the Tribunal erred in remanding the matter for further enquiry. He submitted that the assessing authority accepted the list produced by the petitioner containing the names of the dealers to whom he sold copra and watery coconuts and the other evidence produced by him in the shape of day-book, ledgers, etc., and granted the exemption. The only ground on which the Deputy Commissioner revised the orders of the Commercial Tax Officer was that it was not shown that the sales were made to the registered dealers and the goods suffered tax and, therefore, the assessee must be taken as the last purchaser. This reasoning is obviously untenable as in order to prove that an assessee is not a last purchaser all that is necessary to be shown is that he sold the goods to another dealer. It is not necessary for him to show that the purchaser is either a registered dealer or that he suffered tax. This is not disputed by the learned Government Pleader. If this position is accepted the very basis on which the Deputy Commissioner revised the order falls to the ground. The Deputy Commissioner never stated in his order that the assessing authority was wrong in accepting the list of purchasers

produced by the petitioner before the assessing authority. In other words the fact that the assessee sold copra and watery coconuts to other dealers was not disbelieved by the Deputy Commissioner. He merely proceeded on the footing that as the sales were not made to registered dealers and there was no evidence to show that the goods suffered tax, the assessee must be deemed to be the last purchaser. As the Deputy Commissioner was wrong in this view and as the Deputy Commissioner did not find that the sales were not true or genuine, there was no occasion for the Appellate Tribunal to remand the matter for further enquiry as to whether the sales were in fact effected to other dealers as contended by the assessee. For these reasons, we are of the view that the Tribunal should have allowed the appeal and was wrong in remanding the case for further enquiry. Hence T.R.C. No. 58 of 1977 is allowed and the order of the Deputy commissioner is set aside.

4. Having regard to our decision in T.R.C. No. 58 of 1977, T.R.C. No. 59 of 1977 is also allowed. No costs. Advocate's fee Rs. 150 in each.

5. Petitions allowed.