
(1999) 08 AP CK 0160

In the Andhra Pradesh High Court

Case No : Writ Petition No. 34768 of 1998

Crane Betel Nut Powder Works, Guntur

APPELLANT

Vs

State of A.P. and another

RESPONDENT

Date of Decision : 06-08-1999

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 33, 9(1)
Constitution of India, 1950 — Article 14, 226, 301, 304

Citation : (1999) 6 ALD 30

Hon'ble Judges : V. Bhaskara Rao, J;N.Y. Hanumanthapp, J

Bench : Division Bench

Advocate : Mr. K. Raji Reddy, for the Appellant; Government Pleader for Commercial Taxes, for the Respondent

Judgement

N.Y. Hanumanthappa, J.—The petitioner has filed this writ petition seeking the reliefs to (i) declare the Entry 158(a) of the 1st Schedule to the A.P. General Sales Tax Act, 1957 so far as it imposes higher rate of tax on the Betel Nut Powder imported from other States or Betel-Nut Powder manufactured from out of Arecanut which has not suffered tax under the A.P. General Sales Tax Act, 1957 while imposing a lower rate of tax on Betel Nut powder if the arecanut has suffered tax in the State, as illegal, discriminatory and violative of Articles 301 to 304 of the Constitution of India; (ii) direct the 2nd respondent to levy tax at the rate applicable under Item 158(b) of the 1st Schedule to the A.P. General Sales Tax Act, 1957 in respect of sales of Betel Nut Powder by the petitioner and (iii) direct the respondents to refund the excess tax of Rs.2,51,93,646/- paid by the petitioner during the assessment year 1991-92 to 1994-95 by setting aside the Assessment order dated 15-5-1995, 1-5-1996, 10-1-1997 and 8-7-1997 passed by the 2nd respondent and to pass such other relief or reliefs as the Court may deem fit and proper.

2. A few facts as stated by the petitioner in the affidavit filed in support of the writ petition are as follows:

M/s. Crane Betel Nut Works, Guntur, is a registered private firm. It is an assessee under the provisions of the Andhra Pradesh General Sales Tax Act, 1957 (for short the "APGST Act"). The petitioner purchases Arecanuts from other States. The arecanuts so purchased are subject to tax under the local Acts where they are purchased.

3. The petitioner manufactures betel nut powder out of the arecanuts purchased from other States. As per Entry 158(a) of 1st Schedule to the APGST Act the betel nut powder is liable for tax. The said Entry reads as follows:

Entry 158

SI. No.	Description of Goods	Point of levy	Rate of Tax	Effective from
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158	Betel-nut powder			
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(a)	not covered by item (b) below:	At the point of first sale	6 paise	in the rupee
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10	-do-	1-4-1995		
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(b)	Obtained from Arecanuls that has met under this Act (1165)	-do-	2	-do-
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4	-do-	1-4-1995		
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As per Clause (a) of the above Entry, the betel nut powder is taxable at the rate of 6% if arecanuts have not met tax under APGST Act. If arecanuts have met the tax under the APGST Act, betel nut powder is taxed at the rate of 2%. Thus levying of tax on the betel nut powder depends upon levy of tax on the arecanuts purchased. There is discrimination in respect of rate of tax on the betel nut powder manufactured out of arecanuts if the same is subjected to tax under the APGST Act and arecanuts purchased from outside but not suffered tax under APGST even though the same suffered tax in other States.

4. The Commercial Tax Officer, Patnam Bazar, Guntur (2nd respondent herein) assessed the petitioner in respect of sale transaction of betel nut powder upto the year 1994-95 and levied tax on the betel nut powder manufactured out of arecanut purchased from outside the State at the rate of 6% under Clause (a) of Entry 158 of the 1st Schedule for the assessment years 1991-92 to 1994-95. The petitioner filed appeals before the appellate authority. The same were remanded to the 2nd respondent for re-consideration. For the Assessment Years 1985-86 to 1990-91, the petitioner filed appeals before the appellate authority namely Deputy Commissioner with a delay of more than 30 days. The said appeals are pending adjudication. The Appellate Deputy Commissioner u/s 19 of the Act has no powers to condone the delay caused in filing the appeals of more than 30 days. Further the petitioner cannot question the validity of Entry 158(a) of the APGST Act before the Appellate Authority.

5. Believing that the Entry 158(a) of first Schedule is a valid one, the petitioner

paid higher rate of tax and refunded the difference of tax collected to its customers amounting to Rs.4,57,04,256/- from 1-4-1995 to 20-11-1998. The other customers also made demands for payment of difference tax. From 20-11-1998 the petitioner is collecting only 4% tax on the betel nut powder as contemplated under Entry 158(a) of the 1st Schedule. According to the petitioner, levying of tax on higher rate on the betel nut powder manufactured out of arecanuts purchased from other States which are not subject to tax under APGST Act is quite discriminatory and violative of Articles 301 and 304 of the Constitution of India. Lower rate of tax is levied on the betel nut powder manufactured out of arecanut which is subjected to tax under APGST Act. There is a difference in tax rates levied though the end-product is the same. In case of groundnut oil which was used to be assessed under Entry 24(a) of the 1st Schedule and which was also placed in" similar circumstances, but lower rate of tax under Entry 24(b) of the 1st Schedule was levied. As there was difference in rate of tax levied, which was discriminatory, an assessee by name M/s. Anand Commercial Agencies challenged the Constitutional Validity of Entry 24(a) before this Court. On the ground that the ground nut oil manufactured out of groundnuts which has suffered tax in other States shall not be subjected to higher rate of tax. The said contention was rejected by this Court. In appeal the Supreme Court reversed (the view of this Court holding that Clause (a) item 24 of 1st Schedule to the APGST Act which was identical to Entry 158(a) of the Act relating to betel nut powder, as violative of Articles 301 to 304 of the Constitution of India so far as it relates to levying higher rate of tax on groundnut oil which has been obtained from groundnut, vide Anand Commercial Agencies v. Commercial Tax Officer, 107 STC 586. The above decision has been followed by the Full Bench of this Court in Rajashree Oil Extraction v. Deputy Commissioner, 111 STC 668. It is the case of the petitioner that after the above two decisions in case of groundnut oil, on the advice of his chartered Accountant tendered in month of November, 1998 that principles laid down in the above two decisions squarely applies to the grievance of the petitioner, has filed this writ petition seeking for similar reliefs. According to the petitioner Entry 158(a) of the 1st Schedule to the APGST Act so far as it imposes higher rate of tax on the betel nut powder manufactured out of the arecanuts which are not subject to tax under the APGST Act is illegal, discriminatory and violative of Articles 301 to 304 of the Constitution of India. No reasons are assigned by the respondents to reduce rate of tax in respect of betel nut powder manufactured out of arecanuts which have suffered tax under APGST Act. Levying of two different rates of tax on the same product is impermissible in law. There is no rationale behind in levying higher rate of tax in respect of imported betel nut powder or the betel nut powder manufactured from the non-taxed arecanuts and levying lower rate of tax in respect of betel nut powder manufactured out of tax suffered arecanuts. Thus averring, the petitioner seeks the reliefs that are requested be ordered.

6. On receipt of notice, the respondents put their appearance. The 2nd respondent filed counter affidavit denying the averments made by the petitioner

and also its claim. The 2nd respondent admitted that the petitioner is an assessee. He also admitted that the petitioner purchases arecanuts from other States. According to him, it is not clear that the arecanuts so purchased were taxed under the relevant Sales Tax Act of the concerned State or the Central Sales Tax. On verification of the petitioner's purchase, bills, the Assessing Authority did not find that the arecanuts suffered tax under the Karnataka General Sales Act or Central Sales Act or under General Sales Act of any other State. From the information available, it is only mentioned payment of service tax at 14%. Since the petitioner has not submitted the bills for the years 1991-1992 to 1994-95, the respondent is not in a position to state whether the said arecanuts suffered tax under the KGST Act or CST Act. It is stated by the 2nd respondent that Andhra Pradesh is not an arecanut growing area. It has to import arecanuts from the other States. It is the case of the respondents that if the betel nut powder is made out of the arecanuts which has met the tax under the APGST Act then the tax will be levied at 4% at the point of first sale in the State w.e.f. 1-4-1995 which works out to 9% of tax on arecanut as per item 96 of the I st Schedule of the APGST Act and 4% tax on the resultant betel nut powder as per Item 158(b). Thus the total works out to 13% for the dealer who purchases arecanuts within the State of A.P. and manufactured betel nut powder out of it. The betel nut powder manufactured out of arecanut purchased from other States which has not met tax under the APGST Act was proposed to tax at 10% as per Entry 158(a) of the APGST Act. The dealer who purchases arecanut locally is paying higher tax than the dealer who purchases arecanuts from other States. The appeals pending before the Deputy Commissioner (Appeals) have no relevancy to the relief sought in the writ petition. The principles laid down in Anand Commercial Agencies case have no application to the case on hand. According to the respondents in the said case, the Supreme Court declared that the groundnut oil imported by the appellant from Karnataka State for sale in Andhra Pradesh cannot be taxed at the rate higher than the rate prescribed in Clause (b) of Entry 158 of 1st Schedule to the APGST Act. But in the case on hand the petitioner is not importing betel nut powder. But it is importing only arecanuts which is a raw material but not a finished product like groundnut. Neither the raw material nor the finished product, namely, betel nut powder or the arecanuts, are declared goods. In other words the betel nut powder and arecanut are different items. According to the respondents, the principles laid down by this Court in M/s. Rajashree Oils and Extractions Ltd, v. Deputy Commissioner (CT), Nellore, 27 APSTJ, 98 page 53, have no application to the case on hand. Because in that case the groundnut oil obtained from groundnut cake and the groundnut oil obtained from groundnut were treated as two different commodities. Both the groundnut and groundnut cake suffered tax under the APGST Act. This Court after satisfying that since the groundnut oil is obtained both from groundnut and groundnut cake held that there shall be uniform tax. The respondent averred in the counter-affidavit that the end-products in the cases of groundnut and arecanuts are different. It is contended that the claim for refund of alleged excess tax collected from the petitioner, which

according to the petitioner has been returned to its customers, has no basis as no sufficient material has been produced by the petitioner to that effect. Even otherwise such refund is impermissible in law.

7. According to the 2nd respondent, the tax paid by the petitioner which was collected by him from the customers if ordered to be returned it amounts to unjust enrichment. Further any claim for refund beyond three years is not permissible. The claim of the petitioner for refunding the amount which was spread over for nearly ten years is impermissible in view of the decision of the Supreme Court in *M/s. Bombay Ammonia Pvt. Ltd v. State of Tamilnadu*, STI 1976 SC 94, wherein it is held that "when the assessment was made on the basis of the returns filed by the assessee against which no appeal was preferred nor any steps taken by the assessee for modifying the assessment, the assessee cannot later claim refund of the tax paid and plea of mistake of law is not available." Further Section 33-BB of the APGST Act does not entitle the petitioner to seek refund. The position of betel-nut powder cannot be equated to the groundnut oil which was the subject matter in *Anand Commercial Agency's* case (supra). Because that was a case where the Court found that the oil manufactured was a major portion. In the case on hand, a major portion of arecanuts is imported from other States.

8. Regarding constitutional validity of Entry 158(a) of the 1st Schedule to the APGST Act, the respondent submits that this aspect was explained by the Supreme Court in the case of *Video Electronics Pvt. Ltd. and Another and Weston Electronics Ltd. and Another Vs. State of Punjab and Another*, , which suggests that levying of higher rate of tax does not impair trade and commerce between the two States, because trade depends on several other factors. The betel nut powder not met with tax the same is taxed at 10% whereas the tax made under the APGST Act is at 13%. In view of the peculiar circumstances involved, levying two types of tax on betel nut powder can't be said as discriminatory. Unlike in *Anand Commercial Agencies* case (supra) the petitioner is not importing the betel nut powder.

9. But it is importing arecanuts out of which it manufactures betel nut powder. Thus the end product i.e. betel nut powder is liable to be taxed as contemplated under Entry 158(a) of 1st Schedule. Since the arecanuts and the betel-nut powder are different commodities, levying of two different rates of tax is justifiable. There is no discrimination or violation of Articles 301 to 304 of the Constitution of India in levy of tax. Respondents also stated in the Counter Affidavit that the writ petition is not maintainable as it has alternative remedy of filing appeal. Thus contending, the respondent sought the writ petition be dismissed.

10. The petitioner filed reply affidavit reiterating that the arecanuts in fact suffered tax in other State. It is averred that there is discrimination in levying tax both on arecanuts and betel nut powder. Levying of tax on the commodity whether manufactured within the State or imported from other State shall be the

same, otherwise it will be discriminative. Since the validity of Entry 158(a) of the 1st Schedule to APGST Act is challenged, Article 226 of the Constitution of India is the proper forum. It is stated that the petitioner is entitled to seek refund of the excess tax paid.

11. In support of the averments, both sides addressed their arguments.

12. Sri Raji Reddy, learned Counsel appearing for the petitioner, once again placed reliance on the following decisions, namely, Anand Commercial Agencies Vs. The Commercial Tax Officer VI Circle, Hyderabad and Others, ; Rajashree Oils and Extractions v. Deputy Commissioner (CT) Kurnool District, 111 STC 668 (FB) (supra) and Srinivasa Poultry and Cattle Feed Pvt. Ltd. v. Commissioner of Commercial Taxes, A.P., 1999 (14) STC 67, Taking support from the above three decisions, the learned Counsel contended that imposing two different types of tax as stated above is discriminatory. He submitted that the claim relating to refund of alleged excess tax paid be kept open to be decided by the appropriate authorities as already appeals for the period in question are pending before the Deputy Commissioner for Appeals. He maintained that whatever tax the petitioner collected from the purchasers on the end-product was under a bona fide mistake of law. Thus, whatever excess amount that has been paid shall have to be refunded. He lastly contended that from 20-11-1998 onwards, the petitioner is liable to be taxed at 4% only.

13. Sri M. Ramaiah, learned Government Pleader, submitted that the writ petition is not maintainable for the following reasons, namely, (i) the petitioner without exhausting the alternative remedy has approached this Court by filing the present writ petition; (ii) the petitioner is not entitled for refund of the amount as it has not paid any amount under a mistaken belief. Refund is also not permissible as the claim made has been spread over to ten years; (iii) the petitioner is liable to tax as mentioned at Entry 158(a) of the 1st Schedule to the APGST Act and (iv) the principles laid down in the decisions referred above on facts have no application to the case on hand. According to the learned Government Pleader, in Anand Commercial Agencies case (supra), the question that was cropped up for consideration was whether the groundnut oil manufactured from groundnut or groundnut cake is liable to be taxed differently or not as the end-product one and the same. Whereas the question involved in the case on hand is whether there can be different rates of tax in respect of betel nut powder and arecanuts imported which is converted into betel nut powder. It is not shown how imposition of tax is bad, illegal and discriminatory. He also contended that empowering the State to levy different rates of tax is well in accordance with the provisions of APGST Act. As such it is not in violation of the Constitutional provisions. Further, levying of such different rates of tax on the betel nut powder is neither irrationale nor unreasonable. Imposition of such different rates of tax does not affect the trade and commerce between the States. According to him, levying of tax is one of the fiscal measures and to declare the same as illegal is only when it is abnoxious or shocks one's

conscience. Thus arguing, the learned Government Pleader sought the writ petition be dismissed.

14. Since the entire controversy revolves around Entry 158(a) and (b) of 1st Schedule to the APGST Act and its comparison with Entry 24(a) and (b) of 1st Schedule to the APGST Act, it is necessary to extract herein the said provisions:

Entry 24 and 158

Sl. No.	Description of Goods	Point of levy	Rate of tax	Effective from
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24.	Ground nut oil or refined oil.			
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(a)

Groundnut oil or refined oil not covered by sub-item (b) below;

At the point of first sale 6 paise in a rupee 8-7-1983

10 -do- 1-4-1995

(b)

Groundnut oil or refined oil obtained from groundnut that has met tax under the Act. (1024)

-do- 2 -do- 8-7-1983

4 -do- 1-4-1995

158. Betel nut Powder-

(a) not covered by item (b) below; -do- 6 -do- 1-7-1985

10 -do- 1-4-1995

(b)

obtained from arecanut that has met tax under this Act. (1165)

-do- 2 -do- 1-7-1985

4 -do- 1-4-1995

15. In the case of Anand Commercial Agencies (supra), the Constitutional validity of Entry 24(a) and (b) had come up for judicial consideration where under Entry 24(a) tax in respect of groundnut oil or refined oil obtained from groundnut which had not borne any tax under the Act, was fixed at 6 1/2% and in case of groundnut oil mentioned at Item No.24(b) tax was fixed at the rate of 2 1/2%. The assessee therein, who was the dealer in groundnut oil sold the groundnut oil in the State of A.P. which was brought from Karnataka State which oil was extracted out of groundnuts which had borne tax under the Karnataka Sales Tax Act. It was contended that higher rate imposed by Entry 24(a) on such oil was discriminatory and violative of the assessee's freedom of trade and commerce

throughout India. The said contention was rejected both by the authority and by this Court. Then an appeal was filed before the Supreme Court. The Hon"ble Supreme Court considered the scope of Entries 24(a) and (b) of 1st Schedule to the APGST Act and Entry 6 of 3rd Schedule under which groundnut or peanut (*arachis hypogaea*) was specified as declared goods. The Supreme Court considered the scope of Articles 301, 302, 303 and 304 of the Constitution of India which deal about freedom of Trade and Commerce and Intercourse; powers of Parliament to impose restrictions on trade and commerce and intercourse; restrictions on the Legislative powers of the Union of India and of the States with regard to Trade and Commerce and restrictions on Trade and Commerce and Intercourse among States respectively.

16. The Supreme Court referred to its earlier decisions which had to deal with similar circumstances particularly the following cases, namely, Video Electronics Pvt. Ltd. and Another and Weston Electronics Ltd. and Another Vs. State of Punjab and Another, , wherein the Court while dealing with the scope of Article 301 of the Constitution of India which envisages Freedom of Trade and Commerce without any obstruction or hinderence, held as follows:

"It is manifest that free-flow of trade between two States does not necessarily or generally depend upon the rate of tax alone. Many factors including the cost of goods play an important role in the movement of goods from one State to another. Hence the mere fact that there is a difference in the rate of tax on goods locally manufactured and those imported would not amount to hampering of trade between the two States within the meaning of Article 301 of the Constitution. As is manifest, Article 304 is an exception to Article 301 of the Constitution. The need of taking resort to exception will arise only if the tax impugned is hit by Articles 301 and 303 of the Constitution. If it is not, then Article 304 of the Constitution will not come into the picture at all."

Thus, the Supreme Court observed that a State is not entitled to tax locally made goods at lower rate while taxing similar goods manufactured in other States and imported into the State of A.P. at a higher rate.

17. The Supreme Court made a reference to the decision rendered by it in the case of Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another, , which dealt about taxing on hides and skins imported from outside the State which were subject to higher rate of tax than the rate of tax imposed on hides and skins tanned and sold within the State as per Rule 16 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, wherein it was held that such an Act is discriminatory and it affects free flow of trade and commerce and, thus, it offends Article 301 of the Constitution of India. Thus observing the Supreme Court declared Rule 16(2) which imposed different taxes in respect of same item manufactured from two different sources - one from outside the State and another within the State, a* discriminatory and violative of Article 304(a) of the Constitution of India.

18. The Supreme Court also referred to its earlier view taken in the case of *Weston Electronics v. State of Gujarat*, AIR 1958 SC 2038, whereby the Notification fixing lower rate of tax in respect of local manufactures of electronic goods while fixing higher rate for others was quashed observing that an exception to the mandate laid down by Article 301 and the prohibition contained in Article 303(1) could be sustained on the basis of clause (a) of Article 304 only if the conditions contained therein were satisfied.

19. The Supreme Court approved the decision rendered in the case of *Shree Mahavir Oil Mills v. State of Jammu and Kashmir*, (1997) 104 STC 1480 (SC), wherein the Court declared that the Act of Jammu and Kashmir giving exemption from payment of tax first five years and then extending for another five years in case of manufacturer of indigenous edible oil while denying the same to the manufacturers of edible oil from adjoining States, as discriminatory and violative of Article 304(a) of the Constitution of India.

20. On its examination, the Supreme Court found that no special case was made out in the case of a manufacturer of ground nut oil in Andhra Pradesh to say that they are in disadvantageous position when compared to the oil manufacturer in the neighbouring State, namely, Karnataka and, thus, the local manufacturers have to be compensated by fixing lower rate of tax. After referring to the above decisions, the Supreme Court held that Clause (a) of Entry 24 of the 1st Schedule to the APGST Act is discriminatory and violative of Articles 301 to 304 of the Constitution of India so far as it imposes higher rate of tax on ground nut oil or refined oil obtained from groundnuts that have not been taxed under the APGST Act. The Supreme Court further held that the groundnut oil imported by the appellant from Karnataka for sale in Andhra Pradesh cannot be taxed at a rate higher than the rate fixed in Clause (b) of Entry 24 of 1st Schedule to the APGST Act.

21. The Full Bench of this Court again had an occasion to consider the effect of Entry 24(a) and (b) of 1st Schedule to the APGST Act in the case of *Rajashree Oils and Extractions v. Deputy Commissioner (CT), Kurnool District*, (supra), of which one of us Sri N.Y. Hanumanthappa, J., was a Member. The Full Bench considered the law laid down by the Supreme Court in respect of similar circumstances and also the law laid down by it in *Anand Commercial Agencies v. CTO VI Circle Hyderabad* and another (supra), including the decision of the Division Bench of this Court rendered in the case of *State of A. P. v. Jayanti Oil Mills Pvl. Ltd*, (1995) 20 APGST 255, which has been overruled). The Full Bench once again considered not only the case law on the question involved but also the facts narrated and found that the groundnut oil manufactured whether it is from expeller process or by solvent extraction, the end-product will be the same. To hold that the end-product, manufactured from different sources, to suffer different rates of tax is incorrect. In other words, this Court observed that there is no rationale behind levying different rates of tax - one lower and the other higher - on the same end-product and, therefore, it is arbitrary. The reason for

imposing different rates of tax on the same end-product, namely, groundnut oil on the ground that the cost of groundnut oil which is extracted from the groundnut cake is more than the groundnut oil extracted from the groundnut has no merit. There is no rationale behind such levy, as such the Entry 24(a) suffers from discrimination. The Full Bench also observed that merely because an intermediary product comes into existence before the end-product is ultimately brought into existence, it does not make the end-product different. The end-product remains the same whether it is extracted from groundnut or groundnut cake. When the end-product is the same, there is no justification for levy of two different rates of tax - one higher and the other lower. While over-ruling the view taken by the Division Bench of this Court in the case of *State of A.P. v. Jayanti Oil Mills Pvt. Ltd.*, the Full Bench held that where the groundnut oil whether imported or extracted which suffered tax in the State it should be subjected to same rate of tax. While observing thus, the Full Bench declared Entry 24(a) of 1st Schedule to the APGST Act as discriminatory and violative of Article 14 of the Constitution of India.

22. Subsequent to the Full Bench decision of this Court in the case of *Rajashree Oils and Extractions*, (supra), similar question had arisen for consideration before the Division Bench of this Court in the case of *Srinivasa Poultry and Cattle Feed Pvt. Ltd., v. Commissioner of Commercial Taxes*, (supra). The question involved therein was that Government of A.P. by its G.O. Ms. No. 1055, Revenue Department dated 17-10-1994 issued u/s 9(1) of the APGST Act gave exemption from payment of tax on sale of poultry feed manufactured out of ingredients which have either been subjected to tax or are exempt from tax under the Act. After satisfying that the discrimination effected in order to levy two types of tax not based on valid reason, the Division Bench held as follows:

"The effect of this is that poultry feed manufactured from out of the ingredients imported is subjected to a tax while the poultry feed manufactured from out of the ingredients which have suffered tax in the State or which are exempt from the tax in the State is not subjected to tax. In other words, the poultry feed is classified into two categories - (1) poultry feed subjected to tax; and (2) poultry feed not subjected to tax; depending upon the ingredients used in the manufacture of the said poultry feed. The effect of the notification results in two different prices for the very same poultry feed to be sold in the market. Poultry feed should be subjected to the same rate of tax irrespective of the manner in which it is manufactured. No reason is discernible justifying the exemption in so far as the poultry feed manufactured from out of the ingredients which have suffered tax or exempt from tax in the State is concerned. The exemption granted is a blanket exemption. It is not a notification issued subject to certain conditions for a specific period for the economic development of a particular State to bring the State in equality with other States. Therefore, the notification suffers from discrimination without any reason and it is violative of Articles 301 to 304(a) of the Constitution of India."

23. In order to resolve the issue involved in this writ petition and to hold the validity or otherwise of Entry 158(a) and (b) of 1st Schedule to the APGST Act, it is necessary to keep in mind the effect of Articles 301 to 304 of the Constitution of India which read as follows:

"Article 301 Freedom of trade, commerce and intercourse: Subject to the other provisions of this part, trade, commerce and intercourse throughout the territory of India shall be free.

Article 302. Power of Parliament to impose restrictions on trade, commerce and intercourse: Parliament may by law impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest.

Article 303. Restrictions on the legislative powers of the Union and of the States with regard to trade and commerce:-

(1) Notwithstanding anything in Article 302, neither Parliament nor the Legislature of a State shall have power to make any law giving, or authorising the giving of, any preference to one State over another, or making, or authorising the making of, any discrimination between one State and another, by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule.

(2) Nothing in clause (1) shall prevent Parliament from making any law giving, or authorising the giving of, any preference or making, or authorising the making of, any discrimination if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India.

Article 304. Restrictions on trade, commerce and intercourse among States:-- Notwithstanding anything in Article 301 or Article 303, the Legislature of a State may by law-

(a) impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and

(b) impose such reasonable restrictions on the freedom of trade, commerce and intercourse with or within that State as may be required in the public interest :

Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President."

24. It is well settled that there shall be freedom of trade, commerce and intercourse throughout India unless restricted by giving valid reasons. Levying of sales tax on the goods manufactured inter-state or intra-state will have a bearing of free trade, commerce and intercourse. Levying of sales tax whether by the Act

of State Legislature or by Parliament shall stand to reason and free from discrimination. In case any different rate of tax is fixed it shall stand the test of reasonableness. Such a tax shall not offend Article 301 of the Constitution of India unless protected by Article 304(a) of the Constitution. It is also well settled that the State cannot levy a tax on the goods imported from other States at the rate higher than the similar goods manufactured within the State. This view of ours is supported by the decision of the Supreme Court rendered in the case of Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another, and Wesion Electronics v. State of Gujarat, AIR 1988 SC 2038 (supra). It is also well settled that any rate of tax in respect of a commodity used in inter-state trade and commerce shall not be excessive and prohibitive as otherwise it may become an impediment for free-flow, of trade and commerce.

25. From the above discussion, it is clear that tax on a commodity whether manufactured within the State or imported from outside the State shall be one and the same unless it is authorised by law and protected under Article 304(a) of the Constitution of India. Levying higher rate of tax under Entry 158(a) of 1st Schedule to the APGST Act on the betel nut powder whether imported from outside the State or manufactured from out of the arecanuts which has not suffered tax under the APGST Act in view of the principles laid down by the Supreme Court in the case of M/s. Anand Commercial Agencies, (supra), Full Bench of this Court in the case of Rajashree Oils & Extractions, (supra) and also the Division Bench of this Court in the case of Srinivasa Poultry and Cattle Feed Pvt. Ltd., (supra), has to be held as discriminatory, illegal, ultra vires and unconstitutional. Accordingly Entry 158(a) is declared as illegal, arbitrary, ultra vires and violative of Articles 301 to 304 of the Constitution of India.

26. Regarding second prayer that the petitioner is liable to be assessed under Entry 158(b) of 1st Schedule to the APGST Act in respect of betel nut powder though stand to reason, the petitioner himself restricts his request to extend the benefit of Entry 158(b) w.e.f. 20-11-1998. Thus the petitioner's entitlement is only prospective and not retrospective. For the preceding period, it is stated that appeals are pending. As such he has to work out the same before the appropriate forum.

27. As far as the third prayer seeking refund of a sum of Rs.2,51,93,646/- towards alleged excess payment collected from the petitioner, is concerned this Court cannot grant such a relief by exercising its powers under Article 226 of the Constitution of India as the entitlement of the petitioner depends on various factors including effect of Section 33 BB of the Act. In matters of refund the Court has also to see that the levy imposed whether is passed by the dealer or manufacturer to the customer or consumer. If such an order is made by this Court it amounts to encouraging unjust enrichment. Money if any collected wrongly by the State towards tax, its refund, if any, is only to the consumer and not to the dealer or manufacturer pursuant to declaration of law as invalid. Otherwise it results in helping such dealer or manufacturer to improve his income

and fortune in an unjust manner. Here it is appropriate to refer to the principles laid down by the Division Bench of this Court in the case of *Servet Feeds and Minerals (P) Ltd, v. Commercial Tax Officer, Jeedimetla Circle, Hyderabad and others*, 114 STC 260, which was relied upon by Sri M. Ramaiah, learned Government Pleader, wherein it is held as follows:

"Held, that when a tax has been collected by authority having jurisdiction, rightly or wrongly by passing order and when the said order becomes final under the provisions of the statute under which it is collected, refund of such tax cannot be sought by any other device including filing of a writ petition on the basis that some other manufacturer had succeeded in respect of his claim. A person must fight his own battle and succeed or fail in his proceedings. Further the other manufacturer had not sought any declaration that the tax was unconstitutional or was collected by authority without jurisdiction. He had only sought extension of benefit of a Government order which was meant for manufacturers complying with particular conditions. Therefore the petitioner could challenge the assessment in accordance with the provisions of the Act or seek relief by filing writ petitions seeking extension of benefit to him under that G.O. at an appropriate time by challenging the final assessment order."

Hence it is proper for the petitioner to approach appropriate authority for the relief of refund, if he is entitled and so advised.

28. The findings which we gave on considering the questions involved and conclusions reached on several points raised supported by the authorities referred to above, we have been compelled to (i) declare that Entry 158(a) of 1st Schedule to APGST Act, 1957 in so far as it imposes higher rate of tax on Betel nut Powder imported from other States or Betel nut Powder manufactured from out of Arecanut which has not suffered tax under the APGST Act, while imposing a lower rate of tax on the Betel nut Powder if the arecanut has suffered tax in the State, as illegal, ultra vires and violative of Articles 301 to 304 and 14 of the Constitution of India.

(ii) The respondents are directed to levy tax on the sales of betel-nut powder made by the petitioner as required under Clause (b) of Entry 158 of 1st Schedule to the APGST Act.

(iii) Whether the petitioner was liable to pay tax at 4% only on the sale of Betel-nut Powder w.e.f 20-11-1998 or otherwise has to be agitated before appropriate forum.

(iv) The petitioner's claim to refund of excess tax alleged to have been collected from the petitioner is ordered to be agitated before appropriate forum if he is entitled, since it is stated that appeals are already pending.

29. The Writ Petition is accordingly disposed of. There shall be no order as to costs.