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**(2001) 02 AP CK 0110**  
**In the Andhra Pradesh High Court**  
**Case No : Tax Revision Case No. 11 of 1993**

Deccan Steels

APPELLANT

Vs

State of A.P.

RESPONDENT

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**Date of Decision :** 13-02-2001

**Acts Referred:**

Andhra Pradesh General Sales Tax Act, 1957 — Section 9(1)

**Citation :** (2001) 122 STC 611

**Hon'ble Judges :** S. Ananda Reddy, J; Bilal Nazki, J

**Bench :** Division Bench

**Advocate :** P. Srinivasa Reddy, for the Appellant; Special Government Pleader for taxes, for the Respondent

**Final Decision :** Dismissed

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## Judgement

S. Ananda Reddy, J.—This tax revision case is at the instance of the dealer. The petitioner is a registered dealer under the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter referred to "the Act").

2. During the assessment year 1986-87 the petitioner purchased re-rollable iron scrap worth Rs. 36,34,973 and got manufactured finished goods from out of such purchases and sold the finished products for Rs. 41,00,972. The petitioner claimed set-off of tax relatable to the purchases from the tax payable on the finished goods, in terms of G.O. Ms. No. 774, dated July 9, 1985. The assessing authority negated the claim on the ground that the petitioner is not a reroller within the meaning of the G.O. However, on appeal, the Appellate Deputy Commissioner allowed the claim of the petitioner, observing that there is no condition in the G.O. that the dealer claiming the benefit must own a reroller. The said order of the appellate authority was revised by the Joint Commissioner (CT), relying upon certain decisions of this Court. The said order of revision was assailed before the Sales Tax Appellate Tribunal, which negated the contentions of the petitioner-dealer and confirmed the revisional order. Hence, the present tax revision case.

3. The learned counsel for the petitioner-dealer contended that the revisional authority as well as the Appellate Tribunal is in error in denying the relief that was available under the G.O. issued by the Government. It is stated that it is not required that the dealer himself should own a reroller or a mini steel plant-cum-reroller in order to avail the benefit. According to the learned counsel, the petitioner purchased re-rollable iron scrap and got it converted into the finished product. Both the purchase and sales were affected within the State and therefore the requirements of the G.O. are complied with. Hence, the petitioner-dealer is entitled for the set-off of the sales tax already paid on raw material against the sales tax payable on the finished product.

4. The learned counsel relied upon the following decisions in support of his contention :

Bulbu Prasad Amarnath Vs. Commissioner of Sales Tax, , M. Madar Khan and Co. Vs. Assistant Commissioner (C.T.), Ananthapur and Others, , B.G. Somanna and Sons Vs. State of Andhra Pradesh, , Sri Venkateswara Rice, Ginning and Groundnut Oil Mill Contractors Co. and Others Vs. State of Andhra Pradesh and Others, and The State of Andhra Pradesh Vs. Pottimurthy Subbarao and Co., .

5. The learned Special Government Pleader, on the other hand, supported the order of the Tribunal. According to the learned counsel, the benefit was intended only to the owners of rerollers or mini-steel plant-cum-rerollers and the benefit is not intended to the dealers, who purchases and got the raw material converted into the finished products. According to the learned Government Pleader, the terms of the G.O. are clear that it is intended to benefit only the owners of the steel-rerollers and mini steel plants-cum-rerollers and not intended to benefit the dealers. The learned counsel also contended that the Tribunal has considered elaborately and having found that the petitioner did not fulfil all the requirements contemplated under the G.O., negated the relief sought for by the petitioner-dealer. The learned counsel also contended that while interpreting the terms of the G.O. if there is any ambiguity, the benefit of ambiguity should be given to the State and not to the subject and if so interpreted, the G.O. does not confer any benefit to the petitioner-dealer. The learned Special Government Pleader also relied upon a decision of the Supreme Court in the case of Novopan India Ltd., Hyderabad Vs. Collector of Central Excise and Customs, Hyderabad, . Hence, the tax revision case is liable to be dismissed.

6. From the rival contentions, the issue is whether the petitioner-dealer is entitled for the benefit of set-off of the sales tax already paid on the purchases of rerrollable iron scrap in respect of the sales tax payable on the finished product.

7. It is not in dispute that the assessee-dealer does not own a reroller or mini steel plants-cum-reroller. The activity of the petitioner-dealer is to purchase iron scrap, get it converted by hiring a reroller and sell the same. In the process, it claimed set-off of the sales tax paid on the raw material against the finished product.

8. For convenience the contents of the G.O. Ms. No. 774, dated July 9, 1985 are extracted hereunder :

"In exercise of the powers conferred by Sub-section (1) of Section 9 of the Andhra Pradesh General Sales Tax Act, 1957 (Andhra Pradesh Act VI of 1957), the Governor of Andhra Pradesh hereby directs that where a tax has been levied and collected under the said Act in respect of the sale or purchase inside the State of steel ingots or billets or rerollable scrap referred to in item 2 of the Third Schedule to the said Act, the tax leviable u/s 6 of the said Act on the re-rolled finished products manufactured within the State from out of such ingots or billets or rerollable scrap by the steel rerollers and mini-steel plants-cum-rerollers (in case of purchase of ingots, billets and rerollable scrap by them in the State) situated within the State of Andhra Pradesh and sold inside the State shall be reduced by the amount of tax levied and collected on such ingots, billets and rerollable scrap with effect from the 1st April, 1985."

As found by the Appellate Tribunal, as per the said G.O., the dealer has to fulfil the following conditions :

- (1) The purchase of the rerollable scrap mentioned in item 2 of the Third Schedule shall be inside the State ;
- (2) Such rerollable scrap, which is purchased within the State shall be utilised in manufacturing the rerolled finished products within the State ;
- (3) Such finished products shall be sold within the State ;
- (4) The manufacture of the finished products from out of the rerolled scrap, etc., shall be "by the steel rerollers and mini steel plants-cum-rerollers situated within the State of Andhra Pradesh."

As found by the Appellate Tribunal, in so far as the first three conditions are concerned there is no dispute that the petitioner had complied with. But the dispute is only with reference to the fourth condition, i.e., the manufacture of the finished products shall be "by the steel rerollers and mini steel plants-cum-rerollers". A plain reading of the above G.O. granting the benefit of set-off shows that it was intended to benefit in respect of the manufactured goods by the steel rerollers and mini steel plants-cum-rerollers and not by the dealers, who got the finished product manufacturing by hiring the rerollers.

9. However, the contention of the learned counsel for the petitioner is that the G.O. was intended to give benefit to the manufacturers of finished product by using the rerollable iron scrap specified in item 2 of the Third Schedule. As the petitioner-dealer has got manufactured rerolled steel by utilising the raw material referred to in item 2 of the Third Schedule, he should be given the benefit of set-off of the sales tax payable on the finished products in respect of the sales tax already paid on the raw material.

10. The learned counsel relied upon various judgments of this Court as well as

Supreme Court.

The first one is rendered by the Allahabad High Court in *Bulbu Prasad Amarnath v. Commissioner of Sales Tax, U.P.*, [1964] 15 STC 46. The Allahabad High Court was considering the term "manufacturer". In that case, it was held that in order to become a manufacturer of linseed oil it is not essential that he should himself produce oil from oil-seeds with his own machinery in his own premises. If he gets oilseeds crushed into oil through a servant or agent, the law regards him as having done the crushing himself and he will be a manufacturer of linseed oil. In that case the assessee was a dealer in linseed oil, bought oil-seeds, and got them crushed in another's mill, paid him the charges for crushing, brought the oil to his own premises and then sold the oil. Under the said circumstances, it was held that the assessee was a manufacturer of linseed oil. In the present case, we are not concerned with the term manufacturer, therefore the said judgment is not of any assistance.

The next decision is in the case of *M. Madar Khan and Co. Vs. Assistant Commissioner (C.T.), Ananthapur and Others*, . In this case, a division Bench of this Court considered the term "miller", with reference to the provisions of Section 6, entry 3, Schedule IV of the Act. As per the said entry 8 of the Fourth Schedule, groundnuts were exigible to tax when purchased by a miller in the State at the point of purchase by the miller and in all other cases at the point of purchase by the last dealer who buys in the State. In that case, the petitioner carried on the business of purchasing groundnuts, decorticating the same into kernel and selling the kernel to millers or other dealers or exporting the kernel outside the State of Andhra Pradesh. The petitioner owned no equipment for crushing the kernel into oil and did not engage itself in the business of crushing kernel into oil. Taking the view that a person working as decorticator was a miller within the meaning of item 3 of the Fourth Schedule, the Commercial Tax Officer assessed the petitioner to sales tax for the assessment years 1961-62 and 1962-63, on a turnover, which included amounts representing the first purchase of groundnuts notwithstanding the fact that the groundnuts were sold to millers or other dealers after decortication. On appeal, the Assistant Commissioner dismissed the appeal. Assailing the said order, the petitioner filed the writ petition. Under the above circumstances, it was held that the scheme of entry 3 of the Fourth Schedule to the Andhra Pradesh General Sales Tax Act, 1957, is to make groundnuts exigible to tax at the point when they cease to be taxable commodities, either when groundnuts cease to be groundnuts by being crushed into oil or being passed from the State. Consequently, the word "miller" in the entry can only mean the person who crushes groundnuts into oil by the employment of machinery and does not include a person who merely decorticates groundnuts. If such a "miller" also functions as a "dealer" he will be liable to tax only if the purchase can be brought within the second limb of entry 3, that is, if it is the last purchase within the State. In this judgment, this Court differed with the observations made by the earlier Benches, where it was held that the mere purchase by a miller is sufficient to levy tax. The court also

observed as--"We think that all the deeming and adding can and should be avoided by literally construing the word "miller" to signify a person who functions as a miller, that is to say, who converts groundnuts into oil."

In the above decision, though the court was considering the term "miller", vis-a-vis, whether a decorticating miller would come within the meaning of "miller" so as to levy tax treating him as a converter of groundnuts into oil, the said judgment is not of any assistance for deciding the issue in question.

The next decision is in the case of B.G. Somanna & Sons v. State of Andhra Pradesh [1972] 30 STC 281, rendered by the Supreme Court. This judgment was also rendered with reference to levy of tax at the purchase point by miller and in other cases at point of purchase by last dealer within the State. But the apex Court negated the contention of the double tax and held as under :

"(i) that the validity of the levy of tax upon the purchase by a last dealer could be questioned only by one who was sought to be taxed as a last dealer ; and as the appellants were millers they could not question the validity of the levy of the tax upon a purchase by a last dealer ;

(ii) that the liability to tax fell only at one point. Each of the appellants became liable to the payment of tax as a purchasing miller just as a last dealer would be liable on the purchases made by him. The last dealer and the miller, who purchased presumably to convert the groundnuts into other products, were placed on an equal footing. There was no possibility of double taxation of the same product at more than one point of purchase."

11. The next decision is in the case of The State of Andhra Pradesh Vs. Pottimurthy Subbarao and Co., . This judgment was rendered while considering the item 6 of the Third Schedule to the Act and considered the term "miller". In this case, the dealer purchased groundnuts and got it decorticated in mills neither owned by assessee nor taken on lease. Thereafter part of the kernel got crushed in the mills engaged and sold the oil and cake. The remaining groundnut kernel was sold to other millers and the issue was whether the assessee was liable to be taxed as a miller in terms of item 6 of the Third Schedule. It was held that the assessee was not a miller within the meaning of item 6 of the Third Schedule to the Act and therefore he was not liable to tax. According to the learned Judges, a miller, referred to in item 6 of the Third Schedule, is a person, who owns or works a mill either as a tenant or as a proprietor. The assessee just engages a crushing mill on occasions for crushing a part of his groundnut kernel. He cannot therefore be treated as a "miller" within the meaning of item 6.

12. The above referred judgments relied upon by the petitioner's counsel do not support the contention of the petitioner-dealer. On the other hand, the last judgment rendered by this Court in the case of Pottimurthy Subbarao & Co. [1979] 44 STC 19 supports the contention of the Revenue. Further from the G.O. issued by the Government also, it is clear that the benefits intended in the said G.O, are meant only for a particular category of assessees in respect of the

manufactured product specified therein utilising the raw material procured within the State. The Government Order of exemption intends to benefit in respect of the finished products manufactured within the State by utilising the raw material specified in item 2 of the Third Schedule by giving the benefit of set-off of the tax already paid on the inputs "by the steel rerollers and mini steel plant-cum-rerollers". When such manufactured products are sold inside the State, there is no ambiguity in the said G.O. giving any scope to interpret that the said benefit is intended to be extended even to the dealers, who got the finished products manufactured from a hired rerollers. The products used in the G.O. are very clear that the benefit is intended only to the manufacturers, who are the rerollers and mini steel plant-cum-rerollers. Assuming that there is some ambiguity in the G.O. as to the assessees, who are entitled to the benefit of the G.O. as held by the apex Court in the case of Novopan India Ltd., Hyderabad Vs. Collector of Central Excise and Customs, Hyderabad, , if there is any doubt or ambiguity, the benefit of it must go to the State and not to the subject. Even on that ground also the assessee-dealer is not entitled to the benefit of the G.O. Therefore, in our considered opinion, the Tribunal did not commit any error warranting interference with its order.

13. Under the above circumstances, the tax revision case is devoid of merits and the same is accordingly dismissed.