
(1987) 03 AP CK 0044

In the Andhra Pradesh High Court

Case No : T.R.C. No's. 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of 1987

Dhanalakshmi Vilas Rice Mill Contractors Co.

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 23-03-1987

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 20(2), 6
Central Sales Tax Act, 1956 — Section 14(1), 15

Citation : (1988) 68 STC 46

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

Bench : Division Bench

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

Judgement

B.P. Jeevan Reddy, J.—A common question arises in this batch of tax revision cases. They are preferred against a common judgment of the Sales Tax Appellate Tribunal in a number of appeals.

2. Petitioners are rice-millers in Andhra Pradesh. They purchase paddy and mill it for sale. However, on account of certain Control Orders in force in this State, they are not permitted to sell the entire rice in open market. A part of the rice obtained by them by milling the paddy, they are obliged to deliver by way of compulsory levy to the State at the notified price. The percentage of levy varies from year to year. The balance of the rice, they are entitled to sell in the free market at such price as they can obtain. They can also export the rice outside the State under permits.

3. Paddy and rice are declared goods u/s 14(1) of the Central Sales Tax Act. ("Declared goods" are those which are declared u/s 14 to be of special importance in inter-State trade or commerce). Section 15 of the Central Act places certain restrictions and conditions in regard to the tax on the sale or purchase of declared goods within a State. It says that every sales tax law of the State, in so far as it imposes or authorises the imposition of a tax on the sale or

purchase of declared goods, shall be subject to the restrictions contained in the said section. The restrictions are : (a) the tax payable on such goods shall not exceed 4 per cent and shall not be levied at more than one stage; (b) if tax has been levied under a State law in respect of a sale or purchase inside the State and such declared goods are sold in the course of inter-State trade or commerce and taxed under the Central enactment, the tax paid under the State law shall be reimbursed to the person effecting such inter-State sale; (c) where a tax has been levied under the State law in respect of the sale or purchase inside the State of any paddy, the tax leviable on rice procured out of such paddy shall be reduced by the amount of tax levied on such paddy; and (d) each of the pulses referred to in clause (vi-a) of section 14, whether whole or separated, and whether with or without husk, shall be treated as a single commodity for the purpose of the State Act. In this case, we are concerned with clause (c) in section 15 which may be set out in full along with the preamble. It reads :

"15. Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State. - Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely :-

(a)

(b)

(c) where a tax has been levied under that law in respect of the sale or purchase inside the State of any paddy referred to in sub-clause (i) of clause (i) of section 14, the tax leviable on rice procured out of such paddy shall be reduced by the amount of tax levied on such paddy;

(d)"

4. Section 6 of the A.P. General Sales Tax Act has been enacted consistent with section 15 of the Central Act. It says, declared goods shall be taxed only at 4 per cent, and at one point only. It contains a proviso which is identical with clause (b) in section 15. The declared goods are placed in the Third Schedule to the Act. Paddy and rice are mentioned in this Schedule at serial Nos. 21 and 22. The entries read as follows :

"THIRD SCHEDULE

(Declared goods in respect of which a single point tax only is leviable u/s 6.)

Description of goods Point of levy Rate						S.	No.
						(1)	(2) (3) (4)
						21.	Paddy
(Oryza sativa L.) (3021) At the point 4 paise in the of first purchase rupee. in the State.							
22. Rice (Oryza sativa L.) (3022) At the point 4 paise in the of first sale rupee." in the State.							

It is thus evident that while paddy is taxable at the point of first purchase in the State, rice is taxable at the point of first sale in the State, though at the same rate. There are three explanations appended to this Schedule, of which explanations II and III are relevant for our purposes. Explanation II corresponds to clause (d) in section 15 of the Central Act, while explanation III corresponds to clause (c) in section 15. Explanation III which is relevant for our purposes reads thus :

"For the purposes of items 21 and 22, where a tax has been levied under this Act in respect of the sale or purchase inside the State of any paddy, the tax leviable on rice procured out of such paddy shall be reduced by the amount of tax levied on such paddy."

5. A reading of section 15(c) of the Central Act along with entries 21 and 22 in the Third Schedule to the Andhra Pradesh General Sales Tax Act and explanation III appended thereto, discloses that though paddy and rice are different goods, the Parliament and the State Legislature wanted to tax them only at one stage, evidently because rice constitutes the staple food of the nation, the price of which should be maintained as low as possible. These provisions, therefore, provide that where tax has been levied on the sale or purchase of paddy inside the State, the tax leviable on rice procured out of such paddy "shall be reduced by the amount of tax levied on such paddy". The underlying assumption of these provisions is that the price of rice will always be higher than the price of paddy, which is true in the ordinary course. We may give an example : A miller purchases 100 quintals of paddy at, say, Rs. 100 per quintal. The total price would be Rs. 10,000; he would pay sales tax thereon at 4 per cent, since paddy is taxable at purchase point. When he mills the said 100 quintals of paddy, he gets, say, 70 quintals of rice, which will be sold in the market at Rs. 150 per quintal, which means that the total sale price would come to Rs. 10,500. In the ordinary course rice is taxable at the point of first sale; but, by virtue of section 15(c) and explanation III to the Third Schedule to the Andhra Pradesh General Sales Tax Act, the tax payable on Rs. 10,500 will be reduced by the tax paid on Rs. 10,000. The result would be that tax would be paid only on rice and not on paddy from which that rice is derived. No difficulty had arisen all these years in working these provisions. However, a peculiar situation has arisen in the relevant assessment year by reason of the fact that the notified price at which rice is to be supplied to the State by way of compulsory levy is fixed at a level below the market price. In effect, a rice-miller suffers a loss by supplying compulsory levy to the State, which he makes up, and is allowed to make up, by effecting sales in the free market, or by exporting it to other States. To put it more clearly, the price paid by the State for rice delivered to it by the rice-millers by way of compulsory levy, was less than the purchase price of paddy from which the said rice was delivered plus incidental and milling charges. Taking the above illustration again, while the purchase price of paddy plus other charges was Rs. 10,000, the amount realized by sale of the rice derived from such paddy amounted only to, say, Rs. 9,500, which means that the tax leviable on rice was

less than the tax paid on paddy. The millers, therefore, contended that u/s 15(c) and explanation III aforesaid, they are entitled to refund of the tax paid on such difference amount. This was accepted by certain assessing authorities, and was rejected by some others. Wherever the taxing authorities directed refund of sales tax accepting the millers' contention, the Deputy Commissioner revised those orders u/s 20(2) of the Andhra Pradesh General Sales Tax Act. In those cases where the assessing authorities rejected the millers' contention, the appellate authorities confirmed the same. Appeals were preferred both against the orders of the Deputy Commissioner, as well as the appellate authorities, all of which were considered together by the Tribunal and disposed of under a common order.

6. The contention of Sri S. Dasaratharama Reddi, the learned counsel for the petitioners, is this : According to section 15(c) and explanation III aforesaid, tax is payable only on rice, and not on paddy from which the said rice is derived; it is for this reason that the said provisions provide that tax paid on paddy shall be reduced from out of the tax payable on rice. The petitioners are, therefore, entitled to refund of the tax paid on the difference amount. ("Difference amount" means and refers to the amount of purchase price of paddy in excess of sale price of rice derived from such paddy); the word "reduced" in the said two provisions should be understood in an equitable manner; in the circumstances of these cases, the said expression should be read and understood as "reimbursed", as has been done by a Bench of this Court in *Aitha Narasaiah and Co. and Another Vs. The State of Andhra Pradesh and Another*, . We do not find it possible to agree with the learned counsel.

7. Paddy and rice are different goods for the purpose of both the enactments. The State Act taxes them separately; if a dealer purchases paddy, he has to pay the tax on purchase point; if he converts the paddy into rice and sells the rice, such rice is again taxable at the point of sale. However, section 15(c) of the Central Act and explanation III to the Third Schedule to the State Act step in and provide a relief - a concession. They say, where paddy has suffered tax, such tax shall be reduced from out of the tax payable on the sale of rice derived from such paddy. The underlying idea is that only 4 per cent of tax shall be levied on these two goods put together. The Parliament and the legislature use the word "reduced" in the above provisions on the assumption that the price of rice would always be more than the price of the corresponding paddy which, normally speaking, is a self-evident fact. No doubt, because of the lower levy price (notified price) paid for the levy-rice by the State Government, the price of rice has fallen below the price of the corresponding paddy; but that does not mean that the tax on the difference amount shall be refunded to the millers. If such refund is allowed, the result would be that the paddy is taxed at a rate lesser than 4 per cent. Mr. Dasaratharama Reddi's argument is that since the petitioners have paid tax at 4 per cent on rice, the provisions are satisfied. We do not think so. What the provisions intend is that tax should be paid on the higher price, and since normally the price of rice is higher, they wanted to maintain that tax and refund the tax paid on paddy, the price whereof will be lower. We are

also of the opinion that the expression "reduced" cannot be read as "reimbursed". "Reduced" means a smaller amount being reduced from out of a larger amount. A larger amount cannot be reduced from a smaller amount. Therefore, what should happen in these cases is that no tax will be payable on rice at all, and the tax paid on paddy will be maintained and retained by the State. No question of refund would arise in such a situation. This is the conclusion arrived at by the Tribunal, and we agree with it.

8. Mr. Dasaratharama Reddi placed strong reliance upon the language of the direction given in *Aitha Narasaiah and Co. and Another Vs. The State of Andhra Pradesh and Another*, . The direction relied upon reads as follows :

"In the result, having regard to the provisions in section 8(2A), section 15(c) of the Central Act 74 of 1956, item 22 read with explanation III in the Third Schedule of the State Act 6 of 1957, "paddy" out of which rice is procured involved in inter-State trade, we hold tax paid on paddy is liable to be (reduced) reimbursed. The writ petitions are allowed with the directions indicated above and for the costs we make no order."

9. The contention of the learned counsel is that the Bench has read, understood and interpreted the expression "reduced" as "reimbursed", and that the same should be followed here. It is not possible to agree. In that case the court enunciated three propositions, none of which are relevant here, nor have they been relied upon. The whole contention is that since the Bench understood the word "reduced" as "reimbursed", a direction for reimbursement should follow in these cases as well. As rightly pointed out by the Tribunal, the judgment of a court should not be read as a statute. The above direction has to be understood in the context of the facts of that case. Indeed, the learned Judge who delivered the judgment on behalf of the Bench, took care to use both the expressions, viz., "reduced" and "reimbursed", though he put the expression "reduced" in brackets. That was not a case where a situation like the present one had arisen, nor was there any direction to refund the tax. The word "reimbursed" was used as synonymous with "reduced". The said expression cannot be read as, nor can it be given the extended meaning of "refunded".

10. Before parting with this case, we must refer to an argument of Mr. Dasaratharama Reddi, which he urged at the outset but which he did not persist in later. It can as follows : In column (2) in the Third Schedule to the Andhra Pradesh General Sales Tax Act, in item 21, the entry read as follows prior to the Amendment Act 3 of 1981 :

"At the point of last purchase in the State :

Provided that no tax shall be levied on the purchase of paddy by a dealer where a tax is levied under this Act on the sale by, or purchase from, such dealer, of rice procured out of such paddy."

11. The contention is that while deleting the said entry and substituting the

present entry in column (2), only the words "at the point of last purchase in the State" were deleted but not the proviso thereto. The contention, therefore, is that the proviso still continues to operate. We have seen the amending Act, and we see absolutely no substance in the said contention. The amending Act deletes the entry in column (2) altogether and substitutes a new entry. There is no room for contending that only a part of the entry was deleted leaving the remaining part, i.e., the proviso, in place. Hence no argument can be built up on the basis of the said deleted proviso. We may note that in these cases we are concerned with the assessment years subsequent to the amendment of the said entry.

12. For the above reasons, the tax revision cases fail and are, accordingly, dismissed; but, in the circumstances without costs. Advocate's fees Rs. 1,000 consolidated.

13. Petitions dismissed.