(1992) 02 AP CK 0049

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 355 of 1990

Dwaraka Pershad Badari Pershad — APPELLANT

Vs

State of Andhra Pradesh — RESPONDENT

Date of Decision : 19-02-1992

Acts Referred:

Citation : (1992) 63 TAXMAN 292

Hon'ble Judges : Syed Shah Mohammed Quadri, J;S. Parvatha Rao, J

Bench : Division Bench

Advocate : S. Dasaratharama Reddi, K. Raji Reddi and P. Srinivasa Reddi, for the Appellant;

Judgement

Syed Shah Mohammed Quadri, J.—The petitioner deals in pulses, wheat, etc., and is a registered dealer under the Andhra Pradesh General Sales Tax Act, (''the Act''). After the assessment for the year 1980-81 was completed by the Commercial Tax Officer u/s 20(2) of the Act, the Deputy Commissioner revised the assessment and brought to tax certain turnovers, out of which one item relates to turnover of wheat amounting to Rs. 8,70,306. The addition of this amount was based on the ground that the Hundekar (clearing agent) of the Railways in his statement mentioned the particulars of the wheat imported by the petitioner. The petitioner asked for the statement of the said Hundekar. He was asked to go over to the Deputy Commissioner''s office and inspect the same. He filed an appeal with respect to the said addition before the Tribunal. It was contended before the Tribunal that the copy of the statement of the said Hundekar was not furnished to him, therefore, no reasonable opportunity to defend the addition was given to him. The Tribunal found that the assessee was given permission to peruse the records and he also perused the same and concluded that the plea of denial of opportunity was untenable. In this revision Shri P. Srinivasa Reddi, the learned counsel for the petitioner, strenuously contends that the Deputy Commissioner did not furnish a copy of the statement in spite of asking for the same and as such the assessee was prejudiced. From a perusal of the order of the Deputy Commissioner it is clear that the petitioner was given an opportunity to peruse the records. It is not disputed before us that the petitioner was permitted to peruse the statement of the said clearing agent, or allowed to note down the extracts thereof while perusing the said statement. No objection was raised before the Deputy Commissioner that not furnishing a copy of the statement was not sufficient to defend the case and caused prejudice. Having been satisfied with the perusal of the statement of the Hundekar and having not raised any objection before the authorities, it is not open to the assessee now to contend that he was prejudiced due to not supplying of copy of the statement.

It is further contended before us that even if the statement is accepted, it does not implicate the petitioner. We have gone through the order of the Deputy Commissioner. From a perusal of the order it is seen that no such plea was raised before the Deputy Commissioner that the consignment referred to by the clearing agent does not relate to the petitioner. What all was contended before the Deputy Commissioner was that he did not import wheat before Diwali, 1980. The Deputy Commissioner noted that the petitioner imported 518 bags of wheat in the name of Hariramdas Saduram, but did not report the same at the time of final assessment. He further observed that on examination of the assessment file he came to the conclusion that the dealers had reported taxable turnover of wheat to the tune of Rs. 40,854 and the remaining value of the purchase from outside the State was shown as second sale of wheat by producing bogus bills and so the said amount was added. In these circumstances, we reject this contention.

It is further contended that the Tribunal did not make the statement of the said clearing agent available to the petitioner at the time of hearing of the appeal. Admittedly, the petitioner did not make any request to the Tribunal for calling for the said statement from the department. Therefore, we are unable to accept the contention that the Tribunal erred in not calling for the records.

2. The next point urged before us relates to withdrawal of exemption. It appears with reference to the goods purchased from several dealers that exemption was claimed and the same was granted; however, with reference to seven dealers the exemption was withdrawn and that order was upheld by the Tribunal. A perusal of the order of the Tribunal in regard to the said seven dealers shows that they were all fictitious dealers whose addresses and names did not exist. How-ever, Shri Srinivasa Reddi contends that the dealers had registered their names with the Department and they shall be deemed to be genuine dealers. We are unable to accept the same. If the petitioner is claiming exemption, it is for him to show that he had purchased pulses from dealers who are in existence. Registration of certain names as dealers with the department would not ipso facto entitle the petitioner to the exemption if the said dealers are found to be fictitious and non-existing.

3. It is lastly contended by Shri Srinivasa Reddi that the Tribunal erred in not

granting reduced rate in respect of wheat which is declared goods. This contention was not raised before the Tribunal as can be seen from the order of the Tribunal. We are, therefore, not inclined to permit the contention to be raised for the first time in this Court. For the aforesaid reasons, we do not find any merit in the tax revision case. It is, accordingly, dismissed.

