(1994) 10 AP CK 0002

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 33 of 1994

Gururaj Seeds (Pvt.) Ltd. APPELLANT

Vs

State of Andhra Pradesh RESPONDENT

Date of Decision : 18-10-1994

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

Citation : (1995) 97 STC 246

Hon'ble Judges : S.S. Mohammed Quadri, J;N.Y. Hanumanthappa, J

Bench : Division Bench

Judgement

Syed Shah Mohammed Quadri, J.—This tax revision case is directed against the order dated October 6, 1993, passed by the Sales Tax Appellate Tribunal, Hyderabad, in T.A. No. 728 of 1989. The assessee under the Andhra Pradesh General Sales Tax Act, 1957 (for short "the State Act"), is the petitioner. The assessee is a dealer in agricultural cotton seeds. It claimed exemption from payment of the tax on its turnover of the cotton seeds on the basis of the orders issued by the Government in G.O.Ms. No. 604 dated April 9, 1981. The assessing authority, the Commercial Tax Officer II, Guntur, granted exemption on the turnover of Rs. 30,35,700. However, the Deputy Commissioner withdrew the exemption by his order in Rv. No. 22/88-89 dated March 30, 1989, on the ground that the requirements of the G.O.Ms. No. 604 dated April 9, 1981, are not fulfilled. Against the said order, the petitioner filed an appeal before the Sales Tax Appellate Tribunal. Confirming the order of the Deputy Commissioner, the Sales Tax Appellate Tribunal dismissed the appeal on October 6, 1994. The correctness of the said order of the Appellate Tribunal is assailed in this tax revision case.

2. Shri Srinivasa Reddy, the learned counsel for the petitioner, contends that the requirements of the G.O., have been fulfilled by the petitioner and that the conditions "certified" and "truthfully labelled" are not cumulative conditions but they are alternative conditions and as the petitioner has fulfilled one of the

conditions, viz., "the seeds were truthfully labelled", they are entitled to exemption. In any event, the learned counsel for the petitioner contends, in view of the Memorandum No. 13630/CT.II-2/89-19, dated April 26, 1994 issued by the Government, the petitioner is entitled to the relief prayed for.

3. The learned Government Pleader for Commercial Taxes does not dispute the eligibility of the petitioner to the benefit of G.O. Ms. No. 604.

4. It may however be useful to note here the contents of G.O.Ms. No. 604, Revenue(s) Department dated April 9, 1981, under which the exemption was claimed by the petitioner. It reads as follows :

"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 exempts from the tax payable under the said Act, the sales or purchases of all varieties of certified and truthfully labelled seeds for agricultural purposes."

5. From a perusal of the above G.O., it is clear that the sales or purchases of all varieties which are exempted under the said G.O., may be either "certified" or "truthfully labelled" seeds for agricultural purposes. Section 7 of the Seeds Act, 1966, inter alia, enjoins that no person shall, himself or by any other person on his behalf, carry on business of selling, keeping for sale, offering to sell, buttering or otherwise, supplying any seed of any notified kind or variety except when the container of such seed bears in the prescribed manner, the mark or label containing the correct particulars thereof and this is commonly known as "truthfully labelled". Section 9 of the said Seeds Act is an enabling provision and as per that section, if any person who sells, keeps for sale, offers for sale, etc., desires to have such seeds certified by the certification agency, he has to apply to the agency for grant of a certificate for that purpose. This is an optional requirement and is not mandatory for the purposes of selling the seeds. Therefore, it is possible to have the container of the seeds truthfully labelled but not certified. As this requirement of the G.O., was construed as cumulative, a representation was made to the Government for clarification and the Government issued the following clarification in the memorandum referred to supra.

"In the G.O.Ms. No. 604, Revenue(s) Department dated April 9, 1981, the Government issued orders exempting from the tax payable under the Andhra Pradesh General Sales Tax Act the sales or purchases of all varieties of certified and truthfully labelled seeds for agricultural purposes. In the G.O. second read above, a similar order was issued under the Central Sales Tax Act in respect of the above goods sold in the course of inter-State trade also.

The A.P. Seed Growers Merchants & Nurserymen Association, Hyderabad, National Seeds Corporation, New Delhi and Peddireddy Timmareddy Farm Foundation, Hyderabad, have now represented to the Government, that even though the exemption granted in the above G.0s., are applicable to both the categories of seeds, viz., certified seeds and/or truthfully labelled seeds some of the assessing authorities are insisting that the seeds should be certified as well as truthfully labelled to become eligible for grant of exemption. Hence, they requested the Government, to issue clarification in the matter to remove the ambiguity.

The Government have examined the matter in consultation with the Agriculture and Co-operative Department and they hereby clarify that both ''certified seeds and/or truthfully labelled seeds'' are exempt from tax as per the order issued in G.O.Ms. No. 604 Revenue(s) Department dated April 9, 1981 and G.O.Ms. No. 129, Revenue (CT-II) Department dated February 14, 1989, as they are two types of seeds sold for agricultural purposes."

6. A perusal of the above clarification makes it clear that the "certified seeds" and/or "truthfully labelled seeds" are exempt from tax under G.O.Ms. No. 604.

7. In view of the above clarification, the petitioner is entitled to the exemption under G.O.Ms. No. 604. Therefore, the order of the Sales Tax Appellate Tribunal confirming the order of the Deputy Commissioner has to be set aside and we accordingly do so.

8. The tax revision case is accordingly allowed, but in the circumstances of the case, without costs.

9. Petition allowed.

