

(1988) 03 AP CK 0008

In the Andhra Pradesh High Court

Case No : Special Appeal No's. 4, 5 and 6 of 1987

Machilipatnam Central Consumers Co-operative Stores
Limited

APPELLANT

Vs

Commissioner of Commercial Taxes, Hyderabad

RESPONDENT

Date of Decision : 01-03-1988

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 7

Citation : (1988) 71 STC 153

Hon'ble Judges : Y.V. Anjaneyulu, J;G. Ramanujulu Naidu, J

Bench : Division Bench

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

Judgement

Anjaneyulu, J.—The appellant in these cases is a co-operative society carrying on business in rice and other consumable goods. During the years 1982-83 and 1983-84, the assessee claims to have purchased rice from Phani Enterprises, Machilipatnam and Sri Sai Lakshmi Rice Traders, Machilipatnam. At the relevant time sales tax is payable on sales of rice at the first point. Consequently the assessee claimed that no tax is payable in respect of the sale of rice corresponding to the purchases from the aforesaid persons.

2. Even before the assessment proceedings were completed the Commercial Tax Officer visited the premises of the assessee, seized certain documents and after scrutiny held that the claim of the purchase from the aforementioned persons was bogus. According to the Commercial Tax Officer the sales were merely paper sales and in order to avoid payment of tax at the first point the assessee manoeuvred to obtain certain bills and produced the same as if he has purchased the rice from the aforementioned dealers. In view of the above, the Commercial Tax Officer called upon the assessee to discharge the burden that lay on him that the rice was purchased from the aforementioned persons. The assessee placed information before the Commercial Tax Officer that the claim of purchase of rice

from the aforementioned persons was genuine and that the first seller paid the taxes in challan Nos. 179, 180 and 181 dated 3rd October, 1983. The amounts of taxes paid were Rs. 2,628, Rs. 2,503 and Rs. 5,540. The Commercial Tax Officer refused to believe the above statement of the assessee and levied three sets of penalties acting u/s 7-A of the A.P. General Sales Tax Act. The penalties levied were Rs. 7,884, Rs. 7,509 and Rs. 16,620 by orders dated 6th October, 1983. In disbelieving the particulars furnished by the assessee the Commercial Tax Officer relied on some enquiries made behind the assessee's back. It may be mentioned that although a reference was made to the aforesaid enquiries in the show cause notice issued and the assessee flatly denied the correctness of the averments in the show cause notice the Commercial Tax Officer did not consider it fit to confront the assessee with the persons from whom the statements were recorded.

3. Appeals were filed against the orders of penalty and the Appellate Deputy Commissioner after going into the matter held that the assessee had discharged the burden that lay on him to prove that the sales suffered tax at the first point and it is for the department to discharge the further burden to prove that the position was otherwise. Accordingly the orders of penalty were cancelled.

4. The Commissioner of Commercial Taxes in the purported exercise of revisionary powers u/s 20 of the Act cancelled the orders of the Appellate Deputy Commissioner and restored the orders of the Commercial Tax Officer levying penalty. The ground specified by the Commissioner in his order is that enquiries were made by the department and a statement was recorded from one Shyamal Rao, proprietor of Phani Enterprises, where he denied the genuineness of the sales. It is also said that a statement recorded from Narendra Babu, proprietor of Sai Lakshmi Rice Traders, disclosed that only paper bills were issued without sales. Relying on the above information the Commissioner revised the order of the Appellate Deputy Commissioner and restored the order of the Commercial Tax Officer levying penalty.

5. The order of the Commissioner of Commercial Taxes is assailed herein on two grounds. The first ground was that the Commissioner had no jurisdiction to revise and that the order suffered from total lack of jurisdiction. The second ground was that in view of the evidence adduced by the assessee regarding the first sales suffering tax he should have been given an opportunity to meet the information in possession of the department and to establish that the statements allegedly recorded by the department were not true. It is submitted that the reliance straightaway placed by the Commercial Tax Officer (sic - Commissioner of Commercial Taxes) on the information to revise the order of the Appellate Deputy Commissioner is misplaced.

6. Although we consider that there is considerable force in the first contention of the appellant regarding jurisdiction of the Commercial Tax Officer (sic - Commissioner of Commercial Taxes) we would not like to go into that question in the present case in view of our finding on the second question. Section 7-A of the

A.P. General Sales Tax Act provides that in the case of an assessment made under sub-section (2) of section 5, section 6 or the notification issued u/s 9, the burden of proving that any sale or purchase effected by a dealer is not liable to any tax or is liable to be taxed at a reduced rate shall lie on the dealer. We may also refer to sub-section (1-A) which is in the following terms :

"Notwithstanding anything contained in this Act, or in any other law, a dealer in any of the goods liable to tax in respect of the first sale or the first purchase in the State shall be deemed to be the first seller or first purchaser, as the case may be, of such goods and shall be liable to pay tax accordingly on his turnover of sales or purchases relating to such goods, unless he proves to the satisfaction of the assessing authority that the sale or purchase, as the case may be, of such goods had already been subjected to tax under this Act."

7. The above provisions render an assessee liable to prove that the tax on the first sales was duly paid. This initial burden is sought to be discharged by the assessee in the present case by obtaining invoices, affidavits and furnishing information regarding the challans under which the taxes were paid by the sellers from whom the rice was purchased. This information was furnished by the assessee in reply to the show cause notice issued by the Commercial Tax Officer. Once this information was before the Commercial Tax Officer it was his duty to investigate into the matter, examine the question in greater detail and come to an appropriate conclusion on the correctness or otherwise of the assessee's claim. It need hardly be said that no conclusion can be reached by the Commercial Tax Officer without giving adequate opportunity to the assessee to contradict or rebut the information gathered by the department and without also giving an opportunity to show that the statements of persons if any recorded behind the back of the assessee did not contain truth and should, therefore, be disbelieved. The Commercial Tax Officer failed to do this elementary enquiry. After looking into the evidence placed before him the Commercial Tax Officer rushed to the conclusion that in terms of section 7-A of the Act the assessee did not prove that the tax was paid at the first point of sales and, therefore, the sales effected must be deemed to be the first sales. The penalty was levied on that account. The Appellate Deputy Commissioner rightly considered this infirmity in the order of the Commercial Tax Officer and held that upon the above information and other particulars it must be held that the assessee had discharged the initial burden that lay on him and in that view quashed the orders of the Commercial Tax Officer.

8. The revisionary powers of the Commissioner u/s 20 were pressed into service in this case and the order of the Appellate Deputy Commissioner was revised without following the elementary course of justice to ensure that the assessee is not called upon to suffer a consequence on the basis of information gathered behind his back. The least that the Commercial Tax Officer should have done in this case was to confront the assessee with the statements recorded from the persons on whom reliance was placed, tender those persons for the cross-

examination of the assessee and based on such evidence arrive at a proper conclusion. Instead as a revisionary authority he straightaway came to the conclusion that there was default on the part of the assessee in proving the matter under consideration. We are unable to appreciate the action taken by the Commissioner in this case.

9. We would have in a case like this normally remitted the matter for a fresh enquiry and for a fresh decision in the matter. We do not, however, feel such a course of action is called for in this case as the impugned transaction related to the year 1982 and after a period of six years it is unlikely that any useful information will come into the hands either of the assessee or of the department. It would be an all-round waste of time and we think it, therefore, expedient to quash the order of the Commissioner and restore the order of the Appellate Deputy Commissioner. The appeals are allowed. There shall be no order as to costs. Advocate's fee Rs. 150 in each.

10. Appeals allowed.