

(1975) 01 AP CK 0008

In the Andhra Pradesh High Court

Case No : Special Appeal No. 2 of 1972

M/S. GUNDU AKKIRAJU AND SURYANARAYANAMURTHY,
CONTRACTORS, SHRI VENKATESWARA UMA PARAMESWARA
BOILED AND RAW RICE MILL UNDI

APPELLANT

Vs

THE BOARD OF REVENUE (COMMERCIAL TAXES) ANDHRA
PRADESH, HYDERABAD.

RESPONDENT

Date of Decision : 18-01-1975

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 20(2A), 5

Citation : (1976) 5 CTR 133

Hon'ble Judges : S. Obul Reddi, C.J

Bench : Division Bench

Judgement

S. OBUL REDDI C.J. - The question that is raised and arises in this special Appeal is whether the order of the Commissioner of Commercial Taxes is in contravention of section 20, sub-section (2-A) of the Andhra Pradesh General Sales Tax Act, hereinafter referred to as the Act.

2. The facts necessary for determining the question involved are these. The appellant is a firm of contractors and dealers in paddy and rice. Its turnover for the assessment year 1963-64 was Rupees 5,62,350.08. On that turnover, the appellant was assessed to tax at the rate of 2 per cent. Aggrieved by that assessment made at the rate of 2 per cent the appellant preferred an appeal unsuccessfully to the Assistant Commissioner of Commercial Taxes. On further appeal to the Tribunal, the Tribunal remitted the matter to the assessing authority to determine the rate of tax having regard to the decision of the Court in The State of Andhra Pradesh Vs. Oruganti Venkateswarlu and Bros. and Others, On remand, the assessing authority assessed the appellant on the turnover of Rupees 5,39,137.13 ps. at the rate of 1 1/4 per cent. On appeal to the accordance with the directions of the Tribunal, should be 1 per cent and not 1 1/4 per cent and therefore allowed the appeal to that extent. The Commissioner of Commercial Taxes then suo motu took up the revision after issuing a notice to

the appellant. The Commissioner came to the conclusion that the question whether the turnover should be assessed to tax at the rate specified in section 5-A was not in issue before the Tribunal, and therefore the Assistant Commissioner erred in holding that the assessing authority should have assessed the appellant on the turnover at the rate of 1 per cent instead of 1 1/4 per cent. It is in the view that the rate of tax as payable u/s 5-A was, not in issue before the Tribunal that the Commissioner Taxes revised the order of the Assistant Commissioner and directed assessment at the rate of 1 1/4 per cent on the turnover of Rs. 5,39,137.13 ps.

3. Mr. T. Ramchandra Rao, learned Council for the appellant relying upon section 20(2-A) of the Act, contended that the Commissioner acted without jurisdiction in revising the order of the Assistant Commissioner based on the judgment of the Tribunal. According to him, the only question on raised before the Tribunal was with regard to the rate of tax and when the Tribunal had given a finding on that question, it is not open to the Commissioner to revise the order of the Assistant Commissioner made in accordance with the direction of the Tribunals judgment.

4. Section 20 empowers the Board of Revenue to suo motu examine the record of any order passed by any authority subordinate to it for the purpose of satisfying as to the legality or propriety of such order passed by the subordinate authority. Sub-section (2-A) places a restriction on the exercise of the power by the Board of Revenue under sub-sections (1) and (2) of section 20. This sub-section (2-A) reads :-

20. (2-A) "The power under sub-section (1) of sub-section (2) shall not be exercised by the authority specified therein in respect of any issue or question, which was the subject-matter of an appeal before, or which was decided on appeal by the Appellate Tribunal u/s 21".

Therefore, what has to be seen is whether the Commissioner has revised the finding recorded by the Tribunal in respect of an issue or question which was raised before the Tribunal and decided by it in an appeal. The Tribunal heard a batch of five appeals and pronounced a common order. The common question involved in those five appeals has been stated by the Tribunal in the opening sentence of its order thus.

"Those five appeals are disposed of by a common because they involve the common question relating to the rate of tax on rice which was sold in the course of inter-State treatate or commerce. In all these appeals the rate of tax is disputed and it is argued that it should not be 2% but 1% because it was obtained from paddy which had suffered tax already."

The Tribunal held that the rate of tax should be 1% and not 2% in view of the decision of this Court in *The State of Andhra Pradesh Vs. Oruganti Venkateswarlu and Bros. and Others*, The question raised was whether u/s 5(2) (a) read with item 66 (a) of the First Schedule, the tax to be levied should be 1% or 2%. On a reading of the said provisions, Jaganmohan Reddy, C.J. (as he than was) sitting

with M. Krishna Rao J. held that by virtue of section 8(2-A) of the Central Sales Tax Act read with item 66(b) of the First Schedule to the Act, inter-State sale of rice obtained from paddy that had already suffered tax at 3% was eligible to tax at 1% and not at 2%. The learned Judges were not concerned with the rate of tax leviable u/s 5-A of the Act. Therefore, it cannot be said that the decision rendered by this Court in Oruganti Venkateswarlus case (Supra) applies to cases of turnover referred to in section 5-A of the Act. This section is in these terms :-

5-A "Levy of additional tax on turnover. Every dealer who is liable to pay tax u/s 5 shall in addition to the tax payable under that section, pay for each year a tax at the rate of one fourth paise on every of his turnover liable to tax, if his total turnover for that year is rupees three lakhs or more".

The turnover of the appellant is more than the minimum turnover prescribed by this section. Section 5(2) (a) says that tax shall be levied in the case of goods mentioned in the First Schedule at the rates and only at the point of the sale specified as applicable thereto effected in the State by the dealer selling them, on his turnover of sales in each year relating to such goods irrespective of the quantum of turnover. u/s 5(2) tax is leviable at the rates specified in item 66(b) of the First Schedule in respect of rice obtained from paddy that has met tax under the Act. The rate of tax is one paise in a rupee. Rice relating to the turnover in question was obtained from paddy. But the rate of tax at one paise in the rupee is applicable only to the turnovers below rupees three lakhs mentioned in section 5-A. Where the total turnover exceeds rupees three lakhs, Section 5-A is attracted and additional tax at the rate of one fourth paise on every rupee of the assessee's turnover has to be levied. A reading of the Tribunal would show that there was no issue or question as to the rate of tax payable by an assessee whose annual turnover exceeded rupees three lakhs. The decision in Oruganti Venkateswarlus case (supra) was referred to by the Tribunal only for guidance in respect of cases other than those coming within the purview of Section 5-A. Therefore, when the applicability Commissioner of Commercial Taxes had exceeded his jurisdiction in exercising his powers u/s 20(1) of the Act.

5. We, therefore confirm the impugned order of the Commissioner of Commercial Taxes and dismiss this appeal with costs.