
(2011) 12 AP CK 0006

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 79 of 2011

M/s Rich Graviss Products Pvt. Ltd., 7-1-82, Sainagar Colony,
Boliramalguda, Beside TVS Motors, L.B. Nagar, Hyderabad

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 30-12-2011

Acts Referred:

Andhra Pradesh Value Added Tax Act, 2005 — Section 34(1), 4, 67

Citation : (2013) 57 VST 78

Hon'ble Judges : V.V.S. Rao, J;B.N. Rao Nalla, J

Bench : Division Bench

**Advocate : S.R.R. Viswanath, for the Appellant; K. V. Krishna Koundinya, Spl.
Standing Counsel for C.T., for the Respondent**

Final Decision : Dismissed

Judgement

B.N. Rao Nalla

1. The Tax Revision Case, u/s 34(1) of the Andhra Pradesh Value Added Tax Act, 2005 (for short "the VAT Act"), is filed against the order dated 10-02-2011 in T.A. No.393 of 2010 passed by the Sales Tax Appellate Tribunal, Andhra Pradesh, Hyderabad (for short "the Tribunal").

2. The petitioner - M/s. Rich Graviss Products Private Limited, is a registered dealer under the VAT Act. The case of the petitioner is that it is a manufacturer of "Rich's Whip Topping" (for short "the product") from out of edible vegetable oils and fats. It is not a sweet meat. It is an industrial input sold to bakeries and confectionery industry. It cannot be consumed directly by anyone except using the same for manufacture of bakery products and in hotel industry. Therefore, its case is that the product is an industrial input and it falls under Entry 100(4) of Schedule - IV to the VAT Act, but it does not fall under residuary Schedule -V to the VAT Act, as such, it is liable to tax at the rate of 4% only. Accordingly, the petitioner sought clarification on the following issue from Authority for

Clarification and Advance Ruling (for short "the Ruling Authority") u/s 67 of the VAT Act:

Whether the product "Rich's Whip Topping" is a raw material for bakery and allied industries falls under Entry 100 of Schedule IV to the APVAT Act, 2005 or any other entry of Schedule IV?

3. The Ruling Authority after examining the issue, vide Advance Ruling No. A.R. Com/86/2008 dated 22.5.2009, held that the commodity Rich's Whip Topping, which is an outcome of the process of emulsification, pasteurization, homogenization, chilling and ageing of the combination of the solution of sugar and hydrogenated vegetable oil, is not enumerated either in sub-item of Entry 100 of Schedule - IV or under any other Entry of Schedule - IV to the VAT Act, as such, it is liable to tax at the rate of 12.5% under residuary Entry of Schedule - V to the VAT Act. Aggrieved by the same, the petitioner filed review petition before the Ruling Authority, which by order dated 30.7.2009 upheld its original ruling dated 22.5.2009 holding that the product manufactures by the petitioner is entirely different from any of the items enumerated under Entry 100 of Schedule - IV to the VAT Act and it falls under the residuary Entry of Schedule - V to the VAT Act, and as such, it is liable to tax at 12.5%. Assailing the same, the petitioner carried the matter in appeal in T.A. No.393 of 2010 before the Tribunal. By the impugned order, the Tribunal holding that the product in question is a combination of water, edible vegetable fat, sugar emulsifiers, soy protein concentrates, stabilizers, acidity regulators, salt and also natural and artificial flavouring substances and that it is not referred to in any one of the other sub-clauses of Entry 100 of Schedule - IV to the VAT Act, dismissed the appeal confirming the order dated 30.07.2009 of the Ruling Authority. Hence this revision by the petitioner.

4. Heard both sides and considered the written submissions filed by the counsel for the petitioner and also perused the material available on record.

5. Counsel for the petitioner would submit that the product (Rich's Whip Topping) is an industrial input prepared from out of edible vegetable oils and fats and it is not a sweet meat. The counsel would further submit that the product cannot be consumed directly by anyone except using the same for making bakery products and in hotel industry. The counsel would also submit that the Ruling Authority and the Tribunal are ignorant of the amendment made to Entry 100 of Schedule - IV to the VAT Act by Act No.28 of 2008 with effect from 01.7.2008, which says that the goods sold as industrial inputs would fall under Entry 100 of Schedule - IV to the VAT Act, and erroneously classified the product in question that it falls under the residuary Schedule - V to the VAT Act. In support of his contentions, the counsel relied on the decisions of the Apex Court in State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, Dunlop India Ltd. & another v. Union of India and others AIR 1977 SC 597, M/s. Bharat Forge and Press Industries (P) Ltd. Vs. Collector of Central Excise, Baroda, Gujarat, Indian Metals and Ferro Alloys Ltd., Cuttack Vs. The Collector of Central Excise,

Bhubaneshwar, Brij Mohan and others Vs. State of Rajasthan, , Commissioner of Central Excise, Calcutta Vs. Sharma Chemical Works, Puma Ayurvedic Herbal (P) Ltd. Vs. Commissioner, Central Excise, Nagpur, and also a decision of this Court in M/s. Ravi Agencies v. The State of A.P. 7 APSTJ (1988) 216

6. The counsel for the respondent - State would submit that the Ruling Authority as well as the Tribunal rightly held that the product in question does not fall under Entry 100 of Schedule - IV and falls under residuary Schedule V to the VAT Act, and therefore, it is liable to tax at 12.5% and the same does not warrant interference of this Court in any manner.

7. Now, the points that arise for consideration are "whether the product "Rich"s Whip Topping" is a raw material and/or an industrial input and whether it falls under Entry 100 of Schedule - IV or Residuary Entry of Schedule - V to the VAT Act? "

8. For better reappraisal of the case, it is expedient to extract Entry 100 (4) of Schedule - IV and Schedule - V to the VAT Act which reads as under:

SCHEDULE -IV

100. (the following goods, when sold as industrial inputs)

Sl. No.

Heading No.

Sub-heading No.

Description of goods

(1)

(2)

(3)

(4)

4.

1518

Animal or vegetable fats boiled, oxidized, dehydrated,

sulphurized, blown, polymerized by heat in vacuum or in inert gas or otherwise chemically modified; inedible mixtures or preparations of fats and oils of this chapter.

SCHEDULE-V (See sub-section (3) of Section 4) Goods Taxable at Standard Rate (RNR) of 12.5% All Goods other than those specified in Schedules I, III, IV and VI

9. Even according to the petitioner, it manufactures the product in question from out of vegetable oils and fats and the ingredients of it are water, edible

hydrogenated oils, sugar, emulsifiers, soy protein concentrates, stabilizers, buffering agents and salt. The product is outcome of the process of emulsification, pasteurization, homogenization, chilling and ageing of the combination of solution of sugar and hydrogenated vegetable oils. Further, the case of the petitioner is that the product in question cannot be consumed directly by anyone and it can be used only in making bakery products and in hotel industry, as such, it is an industrial input and/or raw material and falls under Entry 100(4) of Schedule - IV to the VAT Act.

10. The petitioner placed a document (chart) showing the process of making the product. The said process shows that there are more than a dozen stages in making the product. However, the raw material means "any substance, in its natural unprocessed state that serves as the starting point for a production or manufacturing process". But, the product in question is a combination of different ingredients viz., water, edible vegetable fat, sugar emulsifiers, and soy-protein concentrates, stabilizers, acidity regulators, salt and also contains natural and artificial flavour substances. In view of the same, it cannot be said that the product is a raw material and/or industrial input.

11. The Apex Court while dealing with a similarly placed matter in *A.P. Products Vs. State of Andhra Pradesh and Others*, at paragraph 26 held as under.

We have heard the learned counsel for the parties at length and carefully examined various judgments cited by the appellant and the respondents. It is an admitted position that the ingredients which are used in preparation of masala after grinding and mixing lose their own identify and character and a new product separately known to the commercial world comes into existence. According to the ratio in *Pyare Lal Malhotra* case the sales tax is intended to tax sales of different commercial commodities and not to tax the production or manufacture of particular substance out of which these commodities may have been made. Since separate commercial commodities emerge into existence, they become separately taxable goods or entities for the purpose of sales tax.

12. Further, as rightly held by the Tribunal, individually the ingredients of the product in question may fall under Entry 100 of Schedule - IV to the VAT Act and may be exigible to be taxed at 4%, but when once all the ingredients are mixed together, the product in question emerges, and therefore, the product, which is a combination of the above ingredients cannot be said that it falls under Entry 100 of Schedule-IV to the VAT Act and liable to be taxed at 4% only, as such, the same renders the contention raised on behalf of the petitioner as misconceived. Apart from that, admittedly the petitioner uses hydrogenated oil also in the making of the product in question, which does not find place in Entry 100 (4) of Schedule - IV to the VAT Act. On the other hand, Schedule - V to the VAT Act reveals that all the goods other than those specified in Schedules - I, III, IV and VI are taxable at 12.5%. Thus, the petitioner failed to establish that the product in question falls under Entry 100(4) of Schedule - IV to the VAT Act. On the other hand, as rightly pointed out by the respondent-State, the product in question

does not fall in any of the Schedules I, III, IV and VI, and therefore, it falls under residuary Schedule - V to the VAT Act. In that view of the matter, the decisions relied on by the counsel for the petitioner which are mostly to the effect that the onus of proving the classification of goods lies on the revenue, are not helpful to the petitioner and that the remaining decisions are not relevant to the point involved in this case.

13. In the circumstances, we are of the considered opinion that the Tribunal as well as the Ruling Authority rightly found that the product in question falls under residuary Schedule - V and not under Entry 100(4) of Schedule - IV to the VAT Act, and therefore, it is taxable at 12.5%. Hence, there are no grounds to interfere with the order impugned.

14. The Tax Revision Case, is accordingly, dismissed.