
(1994) 10 AP CK 0033
In the Andhra Pradesh High Court
Case No : T.R.C. No. 234 of 1988

Pinakini Seeds

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 25-10-1994

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 22(1), 9, 9(1)
Central Sales Tax Act, 1956 — Section 6, 6(1A), 8, 8(2), 8(2A)

Citation : (1995) 98 STC 144

Hon'ble Judges : S.S. Mohammed Quadri, J; Motilal B. Naik, J

Bench : Division Bench

Advocate : P. Srinivasa Reddy, for the Appellant; The Government Pleader for Commercial Taxes, for the Respondent

Judgement

Syed Shah Mohammed Quadri, J.—This tax revision case is filed u/s 22(1) of the Andhra Pradesh General Sales Tax Act (for short "the State Act"), by the assessee being dissatisfied with the order of the Tribunal in Tax Appeal No. 490 of 1984 dated October 27, 1987.

2. The short but interesting question that arises for consideration in this revision, is whether the exemption granted by the State Government u/s 9(1) of the State Act qualifies for exemption u/s 8(2-A) of the Central Sales Tax Act (for short "the Central Act").

3. The petitioner is a registered dealer in seeds both under the State Act as well as the Central Act. It claimed exemption on the turnover of the seeds as inter-State sales under the Central Act. The assessing authority held that he was not entitled to exemption. The petitioner unsuccessfully appealed before the Appellate Deputy Commissioner, Commercial Taxes, Guntur. The second appeal filed before the Sales Tax Appellate Tribunal having been rejected, it came up in revision to this Court.

4. Sri P. Srinivasa Reddy, the learned counsel for the petitioner, contends that the

two requirements of G.O. Ms. No. 604, Rev. (S), dated April 9, 1981, which exempt the turnover of seeds under the State Act, are not cumulative. Even if one of the requirements of the G.O., is satisfied, the assessee is entitled to exemption. He further contends that the exemption granted under the said G.O. Ms. No. 604 dated April 9, 1981 is a general exemption and qualifies even u/s 8(2-A) of the Central Act.

5. The learned Government Pleader for Commercial Taxes, on the other hand, submits that the requirements of the said G.O., are that the seeds must be "certified and truthfully labelled seeds". He further contends that the expression used "for agricultural purposes" in the said G.O., is indeed a condition under which the exemption is granted. Therefore, the turnover does not qualify for exemption u/s 8(2-A) of the Central Act.

6. To appreciate the contentions of the learned counsel, it would be necessary to note the provisions of section 9 of the State Act, which reads as follows :

"9. Power of State Government to notify exemptions and reductions of tax (or interest). - (1) The State Government may, by notification in the Andhra Pradesh Gazette, make an exemption, or reduction in rate, in respect of any tax or interest payable under this Act -

(i) on the sale or purchase of any specified class of goods, at all points or at any specified point or points in series of sales or purchases by successive dealers; or

(ii) by any specified class of persons, in regard to the whole or any part of their turnover.

(2) Any exemption from tax or interest or reduction in the rate of tax notified under sub-section (1) -

(a) may extend to the whole of the State or to any specified area or areas therein;

(b) may be subject to such restrictions and conditions as may be specified in the notification, including conditions as to licences and licence fees."

7. This section enables the State Government, inter alia, to make an exemption or reduction in tax in respect of any tax or interest payable under the Act, on the sale or purchase of any specified class of goods, at all points or at any specified point or points in the series of sales or purchases by successive dealers, or by any specified class of persons in regard to the whole or any part of the turnover.

8. Sub-section (1-A) of section 6 of the Central Act makes a dealer liable to pay tax under the Central Act on sale of any goods effected by him in the course of inter-State trade or commerce notwithstanding the fact that no tax would have been leviable whether on the seller or the purchaser under the sales tax law of the appropriate State if that sale had taken place inside the State. However, sub-section (2-A) of section 8 of the Central Act provides that notwithstanding anything contained in sub-section (1-A) of section 6 or sub-section (1) or clause

(b) of sub-section (2) of section 8 of the Central Act, the tax payable under this Act by a dealer on his turnover in so far as the turnover or any part thereof relates to the sale or the purchase of any goods, as the case may be, under the sales tax law of the appropriate State is exempt from the tax generally or subject to tax generally at a rate which is lower than 4 per cent, shall be nil or as the case may be, shall be calculated at the lower rate. The expression "exempt from tax generally" used in sub-section (2-A) is defined in the explanation for the purposes of that sub-section to mean that when under the law of the State, the sale or purchase of such goods is exempted only in specified circumstances or under specified conditions, then it would not be exempt from tax generally.

9. A combined reading of all these provisions leads to the conclusion that for the purposes of claiming exemption u/s 8(2-A) of the Central Act, two conditions must be satisfied. They are : (i) the turnover of the sale of goods in question must be exempted under the appropriate State Act, (ii) the grant of exemption under the State Act is not under any specified circumstances or specified conditions. In other words, it is only when an exemption is granted under the State law without specifying any circumstances or conditions that exemption can be claimed under sub-section (2-A) of section 8 of the Central Act. Whether in a given case, the exemption granted under the State Act is under specified circumstances or conditions is a question of fact which has to be determined having regard to the relevant provision of the Government Order which grants exemption. To determine that question in the instant case, it would be useful to read the relevant portion of G.O. Ms. No. 604, Rev. (S), dated April 9, 1981 under which exemption is granted, which is in the following terms :

"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."

10. From a perusal of the excerpt of the Government Order, noted above, it is evident that sales or purchases of all varieties of certified or truthfully labelled seeds, for agricultural purposes, are exempt under the State Act. Now, the question arises as to whether the phrase "certified and truthfully labelled seeds for agricultural purposes" truly interpreted would mean as having specified circumstances or specified conditions or as having only indicated the type of goods which are exempted under the State Act. Before we proceed further, it would be appropriate to notice that the requirement of certified or truthfully labelled seeds for agricultural purposes is the concept borrowed from the Seeds Act, 1966, which is a Central Act enacted with the object of regulating the quality of seeds of any kind or variety to be sold for the purposes of agriculture. Section 7 of the said Act, requires that the containers of seeds should bear, in the prescribed manner, the mark or the label containing correct particulars thereof as specified under clause (b) of sub-section (6) of the Act. This process is popularly

known as "truthfully labelling the container". We may also point out that section 7 of the Seeds Act, enjoins every person who carries the business of selling, keeping for sale, offering to sell, bartering or otherwise supplying any seeds of any notified kind or variety either by himself or by any other person on his behalf, among other things, to have the container of the seeds truthfully labelled as stated above. There is also another requirement which is called "certification". A machinery is provided under the said Act for "certification". Section 9 of the said Act enables a person who intends to sell, keeps for sale, offers for sale, etc., and desires to have such seeds certified by certification agency to apply to the agency for grant of the certificate for that purpose. This is an optional process and unlike section 7, it is not mandatory. The purport of the Government Order, referred to above [G.O. Ms. No. 604, Rev. (S), dated April 9, 1981] is to grant exemption to both categories of seeds, viz., "certified seeds" as well as "truthfully labelled seeds". This appears to be the intention of the Government in granting the exemption. Memorandum No. 13630/CT-11-2/89-19, dated April 26, 1994 of the Government of Andhra Pradesh, Revenue (CT. II) Department is clarificatory of that intention as held by a Division Bench of this Court to which one of us (Syed Shah Mohammed Quadri, J.), was a party, in its judgment in T.R.C. No. 33 of 1994 dated October 18, 1994. Gururaj Seeds (Pvt.) Ltd. Vs. State of Andhra Pradesh,

11. As stated above, "certified and truthfully labelled seeds" are seeds which have been so classified under the "Seeds Act". Therefore, the requirements of the G.O., are only indicative of the nature of the goods which are entitled to exemption and do not specify any circumstance or condition under which the seeds are entitled to exemption. The submission that the expression "for agricultural purposes" specifies the circumstance or the condition subject to which the exemption is available cannot be accepted for the simple reason that that expression qualifies the term "seeds" but does not specify a condition or a circumstance. We have already observed that the purpose of the Seeds Act is to regulate the quality of the seeds of any kind or variety to be sold for the purposes of agriculture. Therefore, labelling or certification of the seeds is only for the purposes of agriculture under the Seeds Act.

12. From the above discussion, it follows that if the seeds are either certified or truthfully labelled they are entitled to exemption both under the State Act as well as under the Central Act.

13. Now we shall refer to the cases cited before us. The learned Government Pleader relied upon the judgment of the Supreme Court in Indian Aluminium Cables Ltd. v. State of Haryana [1976] 38 STC 108. That case arose under the Punjab General Sales Tax Act. There, the turnover on "sales to any undertaking supplying electrical energy to the public under a licence or sanction granted or deemed to have been granted under the Indian Electricity Act, 1910, of goods for use by it in the generation or distribution of such energy" was exempt. The question before the Supreme Court was whether the same turnover was exempt

u/s 8(2) of the Central Act. Having referred to the provisions of both the Acts. The Supreme Court observed as follows :

"Section 8(2-A) of the Central Act exempts goods from inter-State sales tax where a tax law of the State has exempted them from sales tax. The explanation to section 8(2-A) of the Central Act takes away the exemption where it is not general and has been granted in specified circumstances or under specified conditions."

14. Explaining the concept of general exemption, the Supreme Court laid down that general exemption meant that the goods should be totally exempt from tax before similar exemption from the levy of Central tax could become available and where the exemption from taxation was conferred on conditions or in certain circumstances there was no exemption from tax generally. However, relying on the words "for use by it in the generation or distribution of energy" and comparing it with the words "for agricultural purposes" in G.O. Ms. No. 604, dated April 9, 1981, the learned Government Pleader submits that the words "for use by the undertaking supplying electrical energy for its generation or distribution" were interpreted to mean as a specific condition under which the exemption was granted, so the same interpretation should be placed on the words "for agricultural purposes". We are afraid, we cannot accede to the contention of the learned Government Pleader for we have already explained the necessity of using the words "for agricultural purposes" in the context of the Seeds Act. On this aspect, we may refer to the latest judgment of the Supreme Court in *Pine Chemicals Ltd. and Others Vs. Assessing Authority and Others*, [This case has been reversed under review : See *Commissioner of Sales Tax, J and K and Others Vs. Pine Chemicals Ltd. and Others*, . - Ed.]. While referring to the judgment in *Indian Aluminium Cables*" case [1976] 38 STC 108, their Lordships of the Supreme Court pointed out as follows :

".....As may be seen from the provision the two conditions relate to the purchaser-company being a licensed undertaking supplying electrical energy to the public and the goods sold are for use by the said undertaking in generation or distribution of such energy. This Court rejected the contention of the dealer that they are descriptive of the goods and not conditions and held that they are conditions under which exemption is granted and that, therefore, section 8(2-A) of the Central Sales Tax Act was not attracted. As may be seen, the two conditions are attached to the sale of the dealer who is liable to pay sales tax. The description of the person who is to be the purchaser is not intended to identify the seller but relate to a condition of the sale being to a person of that description. The condition that the goods sold are for use by the licensed undertaking in the generation or distribution of electrical energy is again a condition attached to the sale and not identification of the goods. The goods are already identified. If the same goods had been sold to a person who is not a licensed undertaking and/or not for purposes of use in the generation or distribution of electrical energy the transaction would be liable to levy of tax

under local sales tax law. If the conditions specified are satisfied then that transaction which would have otherwise formed part of the taxable turnover is allowed to be deducted from the total taxable turnover. Clearly, therefore, they are specified circumstances or specified conditions within the meaning of the explanation to section 8(2-A) of the Central Sales Tax Act and therefore cannot be treated as exempted from tax generally."

15. In *Pine Chemicals*" case [1992] 85 STC 432 the question before the Supreme Court was whether the sale of vanaspathi ghee by a dealer manufactured by the assessee which was exempt under the State Act was also exempt under the Central Act. The Supreme Court pointed out that the conditions specified in the order granting exemption under the State Act related to the identity of the goods. It was further observed that the conditions relating to identity of the goods and the dealers would always be there in every exemption and that could not be put as a condition of sale.

16. From the above discussion it follows that the requirements in G.O. Ms. No. 604 dated April 9, 1981, viz., the seeds certified and truthfully labelled are not cumulative requirements and that any one of these categories would qualify for exemption and that the exemption granted under G.O. Ms. No. 604, dated April 9, 1981, is a general exemption and as such it qualifies for exemption under sub-section (2-A) of section 8 of the Central Act.

17. In this view of the matter, the order under revision cannot be sustained, so it is accordingly set aside.

18. The tax revision case is allowed, but in the circumstances, without costs.

19. Petition allowed.