**(2001) 08 AP CK 0051**

**In the Andhra Pradesh High Court**

**Case No :** Tax Revision Case No. 65 of 1992

Sethu Laxmi Traders APPELLANT

Vs

State of A.P. RESPONDENT

**Date of Decision :** 08-08-2001

**Acts Referred:**

**Citation :** (2002) 127 STC 593

**Hon'ble Judges :** S.R. Nayak, J;S. Ananda Reddy, J

**Bench :** Division Bench

**Advocate :** A.K. Jaiswal, for the Appellant; The Special Government Pleader for Taxes, for the Respondent

**Final Decision :** Allowed

# Judgement

S. Ananda Reddy, J.

1.This tax revision case is at the instance of the dealer, directed against the order of the Sales Tax Appellate Tribunal dated June 29, 1992 in T.A. No. 476 of 1988 for the assessment year 1980-81.

2. The assessee is a dealer in pulses and is registered on the rolls of the Commercial Tax Officer, Maharajgunj Circle, Hyderabad. The assessee filed its monthly returns in form No. A-2 for the year 1980-81 disclosing its total turnover as well as exempted turnover. Basing on those returns the Commercial Tax Officer framed the assessment granting exemption in respect of the second sales of dal. The Deputy Commissioner, in exercise of his revisional powers u/s 20(2) of the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter referred to as "the Act"), issued show cause notice dated April 8, 1986, The said show cause notice was as a result of the action of the department in cancelling the registration certificate of Sanjay Traders, Agapura, with effect from April 1, 1980, pursuant to which disallowance of similar exemptions claimed by other dealers was confirmed by the Sales Tax Appellate Tribunal in T.A. Nos. 275, 276, 377, 378 and 396 of 1983, dated September 9, 1985. Basing on the said order of the

Tribunal, the Deputy Commissioner proposed to revise the order for disallowing the exemption already granted in respect of the alleged purchases made by the petitioner from Sanjay Traders. Thereafter the Deputy Commissioner took up the matter and according to him the petitioner/dealer failed to produce any evidence to support their claim, and passed orders revising the assessment order passed by the Commercial Tax Officer and accordingly levied the tax in respect of the turnover, which was exempted originally in the assessment. Aggrieved by the said order, the assessee preferred appeal before the Sales Tax Appellate Tribunal. Before the Sales Tax Appellate Tribunal the assessee also sought to file certain additional evidence to prove that Sanjay Traders, in fact, purchased dal, which in turn was sold to the petitioner and accordingly miscellaneous petition--TMP No. 368 of 1990 was filed for receiving certain additional evidence before the Tribunal. The Tribunal following its earlier order, where it was confirmed the cancellation of the registration certificate of Sanjay Traders from whom the petitioner alleged to have been purchased the dal in respect of which exemption was granted, refused to receive the additional evidence on the ground that the said proposed evidence does not prove the case of the petitioner that it had made purchase of gram dal under various bills, which are sought to be produced before the Tribunal. According to the Tribunal, though opportunity was given before the revisional authority, the assessee did not produce any evidence, therefore, the evidence, which was sought to be produced, has no merit and accordingly the claim of the petitioner was rejected, even though it was sought for a remand to consider the additional evidence filed before the Tribunal as well as to give - further opportunity to produce the necessary evidence to prove the case of the petitioner. Aggrieved by the said order of the Tribunal, the petitioner has come up in the present revision.

3. The learned counsel for the petitioner contended that the Tribunal was not justified in considering the merits of the additional evidence without receiving the same and rejecting the appeal on the ground that the evidence sought to be produced did not prove the case of the petitioner that it had in fact made purchase of gram dal from Sanjay Traders. It is contended that the Appellate Tribunal was influenced by its own earlier order, where the cancellation of registration certificate granted in favour of Sanjay Traders was upheld. It is contended that though the Tribunal took the view that Sanjay Traders was a fictitious dealer, in respect of some of the dealers the matters were remitted by the Tribunal for fresh consideration. When the issue was remitted with reference to certain of the dealers to prove their claim of purchase from Sanjay Traders, there was no justification for the same Tribunal to reject the claim of the dealer in the present case to remand the matter on the ground that it was concluded that Sanjay Traders is a fictitious dealer. The learned counsel also contended that the burden of the petitioner is only to prove that it had effected purchases from a real and identifiable dealer. That fact has been proved by the petitioner, which was accepted by the assessing officer. Merely because there was some enquiries and subsequent cancellation of registration certificate of that dealer, would not

 

disentitle the petitioner the claim of exemption as to the second sales effected by the petitioner. The learned counsel also relied upon a decision of this Court in the case of The State of Andhra Pradesh Vs. Thungabhadra Industries Ltd., It is contended that even if the vendor of the petitioner did not pay the tax, in so far as the present petitioner is concerned no liability can be fastened with reference to the second sales effected by the petitioner. The learned counsel also contended that certain enquiries were conducted with reference to the vendor of the petitioner in respect of which the petitioner has no knowledge and ultimately on the premise that the registration certificate of Sanjay Traders was cancelled with retrospective effect, the exemption granted in favour of the petitioner was cancelled. Before withdrawing the exemption, the petitioner must be given sufficient opportunity so as to prove that the petitioner had in fact made the purchases from Sanjay Traders and Sanjay Traders in fact was in possession of the goods, viz., gram dal, which was sold to the petitioner. As the evidence relating to the third party is required to be produced and as sufficient opportunity was not given by the revisional authority, the petitioner was constrained to file the additional evidence before the Sales Tax Appellate Tribunal. The Sales Tax Appellate Tribunal ought to have received the evidence and ought to have remitted the matter to the revisional authority for fresh consideration in the light of the evidence produced by the petitioner and also to give further opportunity to produce further evidence, if required. Hence sought for setting aside the order of the Tribunal and to remand the same to the revisional authority to consider the fresh evidence that was filed by the petitioner as well as to give sufficient opportunity to prove the case of the petitioner that he had in fact made purchase from Sanjay Traders.

4. The learned Special Government Pleader for Taxes, on the other hand, supported the order of the Sales Tax Appellate Tribunal. It is contended that the petitioner/dealer claimed that it had made purchases from Sanjay Traders, which was found to be a fictitious dealer. According to the enquiries conducted by the department, it was found that Sanjay Traders was issuing only sale bills without effecting sales for the purpose of evading tax. As the department stated that the said Sanjay Traders was a fictitious dealer, the registration granted in its favour was cancelled. The said cancellation was even confirmed by the Appellate Tribunal. Therefore, there is no case in favour of the petitioner/dealer to accept its claim for remand. According to the learned counsel, the petitioner failed to produce any acceptable evidence to prove that it had in fact made purchases from Sanjay Traders. In the absence of any such evidence the rejection of the additional evidence and the dismissal of the appeal by the Tribunal is proper and just.

5. Heard both sides and considered the material on record.

6. The dispute is whether the dismissal of the appeal by the Tribunal confirming the revisional order passed by the Deputy Commissioner withdrawing the exemption granted in favour of the petitioner is valid or not.

 

7. The very revisional proceedings were initiated relying upon the orders of the Sales Tax Appellate Tribunal, as is evident even from the show cause notice, where such reference was in fact made by the revisional authority. No doubt before the revisional authority, the petitioner failed to produce any evidence, but before the Sales Tax Appellate Tribunal the petitioner had in fact filed certain evidence and sought for receiving the same as additional evidence. The Appellate Tribunal, without receiving the said evidence, considered superficially the merits and demerits of such evidence and holding that the evidence is not sufficient to prove the case of the petitioner dismissed the appeal, even though the dealer sought for an opportunity for fresh consideration in the light of the additional evidence. The reason given by the Appellate Tribunal was that Sanjay Traders is a fictitious dealer and no evidence was produced by the petitioner/dealer to prove that the petitioner had in fact purchased the gram dal from Sanjay Traders and the goods, in fact, moved to the petitioner''s premises. A perusal of the order of the Tribunal shows that what was sought to be filed by way of additional evidence before the Tribunal was the original sale bills under which the petitioner purchased gram dal from Sanjay Traders and also xerox copies of some documents, such as original receipts under which Sanjay Traders said to have received some goods purchased by them. The petitioner also filed xerox copies of the claims said to have been preferred by Sanjay Traders before the railway authorities seeking compensation in respect of some such goods and also xerox copies of railway receipts under which the firm paid for lifting the goods purchased by it. When such material was filed, the Tribunal ought to have received the same and ought to have considered on merits. Without receiving the said additional material, the Tribunal superficially looked into that material and felt that no useful purpose would be served by producing such material and therefore there is no case either for accepting the additional evidence or for remanding. If the Tribunal relied upon on its own finding that the registration certificate of Sanjay Traders was cancelled and it has become final, it ought not to have remanded in some of the cases for fresh consideration basing on the material filed before it. Having remanded in some of the appeals, we do not find that there is any justification for the Tribunal in refusing to remand the matter to the revisional authority for fresh consideration in the present case in spite of the fact that the petitioner has filed some evidence showing not only the purchase made by it from Sanjay Traders but also material to show that Sanjay Traders had, in fact, made certain purchases of the goods sold to the petitioner. As the revisional authority revised the assessment basing on the enquiries and material relating to third parties, it would be proper and appropriate to give a little more time to the petitioner/dealer to produce the necessary evidence to prove his case.

8. The learned counsel relied upon a judgment of this Court in the case of The State of Andhra Pradesh Vs. Thungabhadra Industries Ltd., where it was held by this Court that in order to determine the eligibility of assessee, a registered dealer, who claimed exemption as a second seller of the groundnut oil taxable at the first point of sale within the State under the Act is to prove that the first

 

seller should be a real and identifiable dealer within the State. It was also held that mere non-payment of the tax by the first seller within the State does not shift the liability to pay the tax on the second seller. Here we are concerned only whether the first dealer is the real and identifiable or not ? In order to prove the same it is proper and just to give proper opportunity to the petitioner, who is only second seller, according to him.

9. Under the above circumstances, without going into the merits of the claim of the petitioner and also the merits and demerits of the additional evidence sought to be filed before the Appellate Tribunal, we think it appropriate to set aside the order of the Sales Tax Appellate Tribunal and to remit the matter to the revisional authority for fresh consideration in the light of the additional evidence that was filed before the Appellate Tribunal. The revisional authority is directed to consider the additional material that has been filed before the Tribunal and also to consider any further material that is filed by the petitioner/dealer and decide the issue afresh.

10. In the result the tax revision case is accordingly allowed. No costs.

 