(2012) 02 AP CK 0027

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 243 of 1998

Sri Krishna Trading Company — APPELLANT

Vs

State of Andhra Pradesh — RESPONDENT

Date of Decision : 09-02-2012

Acts Referred:

Citation : (2012) 49 VST 281

Hon'ble Judges : N. Ravi Shankar, J;Goda Raghuram, J

Bench : Division Bench

Advocate : S. Dwarakanath, for the Appellant; P. Balaji Varma, for the Respondent

Judgement

Goda Raghuram, J.—Heard Sri S. Dwarakanath, Learned Counsel for the revision petitioner and Sri P. Balaji Varma, learned Special Standing Counsel for Commercial Taxes. This revision is directed against the common order of the learned Sales Tax Appellate Tribunal Andhra Pradesh at Hyderabad (for short, "the Tribunal"), dated April 24, 1998 in T. A. No. 606 of 1995 and a batch of five other appeals; insofar as T. A. No. 492 of 1997 is concerned, it was preferred by the revision petitioner against the order of the Deputy Commissioner (Commercial Taxes), Chittoor, revising the order of assessment.

2. The revision petitioner is a dealer, which purchased groundnuts from the Andhra Pradesh Oil Seeds Growers Federation Limited, Hyderabad (for short, "the Federation") and on the strength of the certificates issued by the Federation, the assessing authority granted exemption on the corresponding purchase turnover of groundnuts. It requires to be noticed that in G. O. Ms. No. 621, Revenue, dated June 28, 1989, the State exercising powers u/s 9(1) of the Andhra Pradesh General Sales Tax Act, 1957 (for short, "1957 Act"), exempted purchases of groundnut oil seeds by the Federation or its unions or member farmers under the Oil Seeds Development Project, from the liability to tax under the 1957 Act.

3. The revising authority issued a show-cause notice, dated September 20, 1994, proposing to revise the order of assessment on the ground that since the Federation was exempted under the provisions of G. O. Ms. No. 621, dated June 28, 1989, the revision petitioner was liable to pay the tax as the last dealer qua entry 6 of Schedule III. By the final order dated March 3, 1997, however, the revisional authority following the judgment of this Court in Hindustan Milkfood Manufacturers Ltd. Vs. State of Andhra Pradesh and Another, held that where there is total exemption from the tax on the goods, the liability would arise u/s 6A of the 1957 Act and revised the assessment and brought the net turnover returned by the dealer to tax at four per cent.

4. Aggrieved, the revision petitioner preferred an appeal to the Tribunal. Before the Tribunal, the petitioner specifically contended that in view of the earlier decision of the Tribunal in J. C. Seshaiah Setty and Sons, Kurnool v. State of Andhra Pradesh (T. A. No. 439 of 1993, dated October 16, 1996), if a dealer is to be assessed to tax u/s 6A of the 1957 Act (since the Federation is exempted from the liability to tax under entry 6 of the Schedule III, in view of the exemption granted in G. O. Ms. No. 621, dated June 28, 1989) the revising authority must examine whether the conditions specified u/s 6A of the 1957 Act are satisfied, i.e., whether the goods purchased from the Federation have been consumed in the manufacture of other goods or consumed otherwise, in other words whether the dealer had converted such groundnuts into oil or sold the groundnuts as such. If the groundnuts as such were sold by the dealer, then he would not be liable u/s 6A of the 1957 Act, as the case would fall under the second limb of the provisions in entry 6 of the Schedule III, i.e., purchaser as a last dealer. Despite noting this contention of the petitioner, the Tribunal did not deal with the same but proceeded on the ground that since the bye-laws of the Federation authorize the Federation to pursue the business not only as a miller but also a dealer in oil-seeds the exemption under G. O. Ms. No. 621, dated June 28, 1989 would apply only to such turnover of the Federation pertaining to the purchase of groundnuts intended for its milling operations, i.e., crushing into oil and not to those purchases of groundnuts meant for resale. For this analysis, the Tribunal relied on the decisions of this Court in Nabi Oil Mills Vs. Commercial Tax Officer and Others, and The State of A.P. Vs. Lalitha Oil Mills and Others,

5. Resultantly, T. A. No. 492 of 1997 was dismissed on the ground that the revision petitioner had adduced no proof that he was the last purchaser of the groundnuts in the State and therefore liable to tax. The finding by the revisional authority was confirmed.

6. Section 5 of the 1957 Act, which is the charging section, enjoins that "save as otherwise provided in this Act, every dealer shall pay a tax under this Act for each year on every rupee of his turnover of sales or purchases of goods in each year irrespective of the quantum of his turnover at the rate of tax and at the points of levy specified in the Schedules."

7. Entry 6 of Schedule III of the 1957 Act pertains, inter alia, the groundnut and

the point of levy is specified as under :

When purchased by an oil miller other than a decorticating miller in the State, at the point of purchase by such miller and in all other cases at the point of purchase by the last dealer who buys in the State.

The rate of tax is specified to be four per cent.

8. It is textually clear and indisputable position as well, that in view of entry 6 of Schedule III, it is a Federation, which is liable to tax since it is an oil-miller, which has purchased the specified groundnuts; and the liability arises at the point of levy specified. The second facet of entry 6 dealing with the point of levy, namely, the liability of the last dealer arises and at the point of purchase only when the purchase is not by an oil-miller. If the liability of the Federation is exempt by virtue of the notification in G. O. Ms. No. 621, dated June 28, 1989, the liability would not in the context of entry 6 shift to the petitioner as the last dealer.

9. However, that provision per se, is not in dispositive of the issue as to liability of the revision petitioner.

10. Section 6A of the 1957 Act enjoins that,--

Every dealer, who in the course of business,--

(i) purchases any goods (the sale or purchase of which is liable to tax under this Act) from a registered dealer in circumstances in which no tax is payable u/s 5 or u/s 6, as the case may be, or

(ii)...

(a) consumes such goods in the manufacture of other goods for sale or consumes them otherwise, or

(b) disposes of such goods in any manner other than by way of sale in the State, or

(c) despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce,

shall pay tax on the turnover relating to purchase aforesaid at the same rate at which but for the existence of the aforementioned circumstances, the tax would have been leviable on such goods u/s 5 or section 6.

11. In the circumstances and in view of the exemption in favour of the Federation, the liability of the petitioner would arise if the conditions enjoined in section 6 are satisfied and for that liability to be fastened it has to be established that the petitioner/dealer had purchased the goods and had either consumed such goods in the manufacture of other goods for sale, or otherwise consumed them, or disposed of such goods in any manner other than by way of sale in the State, or dispatched them to a place outside the State except as a direct result of sale or purchase in the course of inter-state trade or commerce.

12. The petitioner was treated as liable u/s 6A of the 1957 Act by the revisional authority vide the order dated March 3, 1997, but without any mention or discussion of his liability u/s 6A of the 1957 Act, in the show-cause notice dated September 20, 1994. It is axiomatic and established by the precedent vide State of Andhra Pradesh v. Loharu Steel Industries Limited [1996] 96 STC 369 (AP) that a revisional authority cannot engraft a liability without notice to the assessee/dealer.

13. The order of the revisional authority, dated March 3, 1997, determining the liability of the revision petitioner u/s 6A of the 1957 Act must therefore be held to be unsustainable for transgression of the audi alteram partem principle, particularly in view of the statutory obligation u/s 20(4) of the 1957 Act requiring the revisional authority to provide an opportunity to show cause against the proposed enhancement.

14. The Tribunal, however, proceeded not on the basis of the revisional authority''s premise of the petitioner''s liability u/s 6A of the 1957 Act, but on the basis that since the bye-laws of the Federation enable the Federation to function not only as a miler but also as a dealer in the oil-seeds, the exemption notification in G. O. Ms. No. 621, dated June 28, 1989 must be construed as limited to such of the purchases of groundnut by the Federation which are meant for crushing into oil and not for purchases for groundnut meant for resale; and that the Federation having sold groundnut to the revision petitioner/dealer, it was not the Federation but the revision petitioner that was liable under the second aspect of entry 6 of Schedule III; as the last dealer who buys in the State.

15. This reasoning of the Tribunal is fallacious since as pointed out in Nabi Oil Mills Vs. Commercial Tax Officer and Others, and The State of A.P. Vs. Lalitha Oil Mills and Others, , the burden is upon assessee to show that they purchased a part of the turnover for milling and the rest for sale. Therefore, if the order of exemption under G. O. Ms. No. 621, dated June 28, 1989 were be restrictively interpreted as confined to the turnover relating to milling by the Federation, then the burden is upon the Federation as an assessee (that the Federation is also a dealer under the provisions of the 1957 Act is not in dispute) to establish that they were in fact in the business of trading as well and had purchased part of the turnover for sale.

16. On the aforesaid analysis, the impugned order of the Tribunal cannot be sustained and is accordingly set aside. The order of the revisional authority, dated March 3, 1997 cannot also be sustained since that order proceeded to determine the revision petitioner''s liability to tax under the provisions of section 6A of the 1957 Act without affording the petitioner an opportunity on this aspect of the matter. Accordingly, the tax revision case is allowed. There shall be no order as to costs.

