
(1999) 04 AP CK 0029

In the Andhra Pradesh High Court

Case No : Writ Petition No. 28355 of 1998 and Batch

Sri Rajarajeswari Parboiled Rice Industry, Kombarabanda,
Nalgonda Dist.

APPELLANT

Vs

Kodad, Nalgonda Dist. and others

RESPONDENT

Date of Decision : 09-04-1999

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 42, 7
Central Sales Tax Act, 1956 — Section 15, 5(3)
Constitution of India, 1950 — Article 226
Finance Act, 1996 — Section 14

Citation : (1999) 3 ALD 309 : (1999) 3 ALT 449

Hon'ble Judges : Ramesh Madhav Bapat, J;P. Venkatarama Reddy, J

Bench : Division Bench

Advocate : Mr. S. Krishna Murthy, for the Appellant; Special Govt. Pleader for Taxes, for the Respondent

Judgement

P. Venkatarama Reddi, J.—The writ petitioners, almost all of whom are Rice Millers, have filed these writ petitions either questioning the Circular issued by the Commissioner of Commercial Taxes, Andhra Pradesh in CCTs.Ref.A.II (1)/2954/96, dated 24-6-1998 or the assessment orders - provisional or final, made under the A.P. General Sales Tax Act, against them. In some of the assessment years, for instance in WP No.28355 of 1998, a reference has been made to the Circular of the Commissioner and the claim for exemption was negativatcd on the basis of the said circular.

2. The relevant portion of the Circular, which was issued after Clause (ca) was introduced into Section 15 of the Central Sales Tax Act by Finance Act of 1996, reads as follows :

"When rice is exported to other countries no tax can be levied on the corresponding value of paddy used after obtaining such rice. This clarification is applicable when rice miller after purchasing paddy converts it into rice and

exports the rice. But it will not apply to the transactions where a miller is selling rice to other countries. As per Section 5(3) of the CST Act only one sale and one purchase prior to export are exempt from tax. If a miller sells rice to exporters and in turn the exporter exports the rice, the purchase of paddy in the hands of the miller will not be exempt from tax and the purchase "will not be a purchase immediately prior to export even though paddy and rice are treated as one and the same commodity for the purpose of Section 5(3). There is no doubt about the above interpretation in the light of the decision of the A.P. High Court in the case of Bismilla & Co. v. State of Andhra Pradesh, 8 APSTJ 80."

3. u/s 42-A of the A.P. General Sales Tax Act, 1957, the Commissioner is empowered to issue instructions and directions not inconsistent with the provisions of the Act to his subordinate officers for the proper administration of the Act and such officers and other persons connected with the enforcement of the Act, shall comply with such orders, instructions and directions. The proviso says that no such orders, instructions or directions shall be deemed to interfere with the discretion of an appellate authority.

4. Coming to the broad facts of the case, the petitioners purchase the paddy within the State, convert them into rice and sell the rice to the dealers who export the rice pursuant to the orders placed on them by the foreign buyers. u/s 5(3) of the Central Sales Act, the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods shall be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with the agreement or order for or in relation to such export. This provision was introduced in the year 1976 in order to expand the ambit of tax immunity extended to the transactions intimately connected with export. The Central Sales Tax Act was further amended in the year 1996 by adding Clause (ca) to Section 15 so as to amplify the scope of immunity u/s 5(3) to the export transactions involving rice. Clause (ca) of Section 15 reads as follows :

"Where a tax on sale or purchase of paddy referred to in sub-clause (i) of clause (i) of Section 14 is leviable under that law and the rice procured out of such paddy is exported out of India, then for the purpose of sub-section (3) of Section 5, the paddy and rice shall be treated as a single commodity."

5. It is the contention of the petitioners that clause (ca) has been introduced to grant tax exemption to dealers like the petitioners who purchased paddy in order to facilitate the fulfillment of the export obligation pursuant to a contract with a foreign buyer.

6. However, it is the contention of the learned Government Pleader that the transaction of purchase of paddy, which is two stages prior to the sale occasioning the export is not covered by the provisions contained in Section 5(3) read with Section 15(ca) of the Central Sales Tax Act. The same view has been taken by the Commissioner and the relevant portion of the Circular extracted

above is self-explanatory. It is also contended by the learned Government Pleader that in many cases, there is a finding to the effect that the purchase of paddy by the petitioners is not traceable to or backed up by any export order and the claim was rejected for want of evidence in this behalf. However, the learned Counsel appearing for the petitioners endeavored vehemently to attack this finding. But we are not inclined to go into the correctness or otherwise of the finding on this aspect of the case in exercise of our jurisdiction under Article 226 of the Constitution in as much as it is a factual finding and the petitioner have to necessarily challenge the same before the appellate and revisional authorities constituted under the Act.

7. We, therefore, heard the arguments insofar as the validity of the impugned circular of the Commissioner is concerned. It cannot be gainsaid that in the face of the circular issued by the Commissioner, the assessing and appellate authorities under the Act who are subordinates to the Commissioner cannot take an independent view on the interpretation of the relevant provisions, it is true that the Act enjoins that the Commissioner's circular is not binding on the appellate authority. But, in effect and in substance, the appellate authority who is administratively subordinate to the Commissioner and whose orders are also amenable to revision by the Commissioner will be inhibited to take a different view. The Supreme Court, more or less, in similar circumstances, allowed the assessee to seek relief without resorting to the alternative remedies, because in the opinion of the Supreme Court, the remedy of appeal will be a futile remedy vide *Filterco and Another Vs. Commissioner of Sales Tax, Madhya Pradesh and Another*, . In any case, as far as the assessing authority is concerned, there can be no dispute that the Circular is binding. In many cases, which form part of this batch, provisional assessments are made and the final assessments are yet to be made and naturally, the assessing authorities will reiterate the view taken by them earlier based on the Circular of the Commissioner.

8. In these circumstances, we felt it necessary to consider the validity of the circular of the Commissioner, though the petitioners have the remedy of appeal to the appellate Deputy Commissioner against the order of the assessing authority.

9. On a perusal of the Circular of the Commissioner, we find while the Commissioner interpreted Section 5(3) read with Section 15(ca) and analysed the position thereunder. However, the Commissioner has not referred to nor taken into account another relevant and crucial provision, namely the Explanation to Section 7(b) of the A.P. General Sales Tax Act. The said explanation reads as follows:

"For the purpose of Clause (b), the expression "sale or purchase effected immediately before the export of such goods" insofar as it relates to export to any place outside the territory of India, shall include the last sale or purchase of any such goods preceding the sale or purchase effected immediately before the export of such goods, as referred to in sub-section (3) of Section 5 of the Central

Sales Tax Act, 1956."

10. The contention of the learned Counsel for the petitioners is that the purchase of paddy by the petitioners pursuant to the order placed on them by the exporters of rice is squarely covered by the Explanation, whatever view may be taken as regards the interpretation of Section 5(3). It is contended that this explanation read with Clause 15(ca) squarely extends the tax exemption to the transactions of purchase of paddy by" the petitioners and is a complete answer to the departmental stand. It is further contended that while levying tax under the provisions of the A.P. General Sales Tax Act, it is not open to the Commissioner or the assessing authority to overlook this provision and even if it confers greater benefit than what Section 5(3) does, the petitioners will be legally entitled to claim that benefit.

11. For the purpose of disposal of these writ petitions, we are not inclined to express any view on the question as regards the interpretation of Section 5(3) and the Explanation to Section 7 in the light of the contextual facts. Suffice it to observe that the contention put forward by the Counsel for the petitioners cannot be discarded outright. There is some force in the contention. The Commissioner while issuing a clarification or instruction to the Subordinates ought to have addressed himself to an equally important and relevant provision i.e., the Explanation to Section 7(b) of APGST Act. The failure to refer to that provision and the failure to apply his mind as regards the impact of that provision on the disputed transactions or its inter-relation to the provisions of the Central Sales Tax Act, in our view, vitiates the circular of the Commissioner and it is on this short ground, we set aside the circular of the Commissioner. The Commissioner, by referring to the provisions of the Central Sales Tax Act and excluding from consideration Section 7 of the APGST Act, has in our view, made a truncated approach to the problem and such a circular shall not be allowed to stand and have a binding or persuasive effect on the concerned authorities.

12. We, therefore, quash the aforementioned circular issued by the Commissioner of Commercial Taxes. Consequentially, we allow such of these writ petitions in which the assessments were made quoting and following the circular of the Commissioner. In such cases, the assessments - provisional or final shall be re-done. However, those writ petitions, in which the claim for exemption has been negated independently without referring to the Commissioner's circular, either on the interpretation of Section 5(3) or on the ground of lack of nexus between the export orders and the purchases, we dismiss the writ petitions leaving it open to the petitioners to seek appropriate remedies under the Act.

13. We shall not be understood to have expressed any view on the question whether the petitioners are entitled to exemption under the provisions of Section 5(3) read with Section 15(ca) of CST Act or Explanation to Section 7 of the APGST Act. These questions are left open to be decided by the appropriate authorities independently and without being fettered by the Commissioner's circular.

14. In those cases where the petitioners did not prefer the appeals on account of the pendency of the writ petitions, it is open to them to file appeals within a period of three weeks from today and if such appeals are filed, the appeals shall be heard on merits without raising any objection as to limitation.

15. The ultimate result in individual cases is as follows :

The writ petition Nos.28355/1998, 20160/1998, 20408/1998, 4786/1999, 22630/1998, 23737/1998, 28514/1998, 28353/1998, 33260/1998, 2960/1998 are allowed and the impugned assessment orders are set aside with a liberty to make fresh assessments.

16. The writ petition Nos.3197/1999, 2957/1999, 3198/1999, 3199/1999, 3684/1999, 3685/1999, 3686/1999, 3702/1999, 3185/1999, 3163/1999, 3092/1999, 2728 and 2729 of 1999 are also allowed. "I hough in the assessment orders, there is no specific reference to the Commissioner's circular, we find that he contents of the Circular are repeated verbatim and therefore, it cannot be said that the invalidated circular had no impact on the decision making. We may also mention that in Writ Petition Nos.3686/1999, 3702/1999, a passing observation has been made by the assessing authority that the relevant documents evidencing the export order etc., have not been filed. However, the main thrust is on the interpretation of Section 5(3)/15(ca), in the light of the Commissioner's Circular. In the show-cause notice, lack of satisfactory proof or non-production of documents has not been mentioned as a ground for disallowing the exemption. Hence, these two writ petitions also stand on the same footing.

17. The Writ Petition Nos.20409/ 1998, 22590/1998, 19269/1998, 19677/1998,26545/1998, 20417/1998 and 2246S/ 1998 are dismissed subject "to the observations made in the judgment. No costs.