
(1995) 11 AP CK 0044

In the Andhra Pradesh High Court

Case No : Special Appeal No's. 1 to 10 and 13 of 1994

Sri Ramanjaneya Groundnut Factory

APPELLANT

Vs

C.T.O. Kadiri and Another

RESPONDENT

Date of Decision : 10-11-1995

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 14(4), 20(1), 23

Citation : (1996) 103 STC 297

Hon'ble Judges : P. Venkatarama Reddi, J;P. Ramakrishnam Raju, J

Bench : Division Bench

Judgement

1. This batch of 11 appeals filed u/s 23 of the Andhra Pradesh General Sales Tax Act (hereinafter referred to as "the Act") arises out of the orders passed by the Commissioner of Commercial Taxes in identical terms u/s 20(1) of the Act. These assessment years relate to 1983-84 to 1985-86. Five dealers doing business at Kadiri and Tanakallu, Ananthapur District, are the appellants in these appeals. By the impugned orders, the Commissioner set aside the common order dated May 28, 1990, passed by the Appellate Deputy Commissioner (C.T.), Kurnool, allowing the appeals filed by the appellants herein against the reassessment orders made by the Commercial Tax Officer, Kadiri, in March, 1990.

2. The relevant facts are these : The appellants during the relevant point of time were engaged in the business of purchasing groundnuts, decorticating the same and selling the resultant groundnut seeds to other dealers in the State. Groundnut is declared goods, taxable u/s 6 read with Schedule III. The point of levy is as follows :

"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."

3. Thus, the appellants not being oil millers are not liable to tax the point of first purchase but the liability attaches to them if they are the last purchasers. In

respect of the groundnut seeds sold to other registered dealers in the State, the appellants claimed exemption inasmuch as the appellants would not be last purchasers. The assessing authority allowed the exemption on a scrutiny of the accounts, bills and the affidavits filed from the purchasing dealers. In this exempted turnover, the purchase turnover corresponding to the sales effected to a registered dealer by name, M/s. P. Sudhakar Oil Mills, Kishanganj, Hyderabad, were also included. The affidavits filed by M/s. P. Sudhakar Oil Mills to the effect that they purchased the groundnut seed from the appellants and included the same in their turnover, are on record. About two years later, it appears that the assessing authority received a report from the Commercial Tax Officer, Osmanganj, according to which some of the sales said to have been made by the appellants were not accounted for by the said dealer and that he denied those transactions. We may mention at this stage the contents of the letter given by the proprietor of M/s. P. Sudhakar Oil Mills on June 22, 1989 to the Commercial Tax Officer, Osmanganj, Hyderabad. The said dealer furnished the details of purchases from 10 dealers. Out of them, excepting the appellants in Special Appeal Nos. 3 and 4 of 1994 (M/s. Manjunatha Groundnut Traders), the names of the other dealers figure in the letter. However, from the letter of the proprietor of M/s. Sudhakar Oil Mills, it is clear that he accounted for some of the transactions with respect to the other four appellants. We may also mention that the statement in the letter was only to the effect that out of 136 transactions regarding which enquiries were made by the Commercial Tax Officer, Osmanganj, only 25 transactions covered by purchase bills were entered in the books of account and the remaining were not entered. The letter does not contain any statement as to whether the disputed consignments of groundnut seed were in fact sold by the appellants and received by them. On the basis of the said statement, the assessments of the appellants were reopened by the assessing authority, who issued notices in November, 1989. It is stated in the show cause notices that M/s. P. Sudhakar Oil Mills did not account for the sales mentioned in the notices and also denied having purchased groundnut seed from the appellants. It was then stated in the notices that the affidavits of M/s. Sudhakar Oil Mills on the basis of which exemption was allowed were bogus ones and therefore the burden of proof shifted to the appellants to establish that they were not the last purchasers. Hence, it was proposed to disallow the exemption, already granted on the relevant transactions in exercise of powers u/s 14(4)(cc) of the Act and to bring additional turnovers to tax. In reply to the notices, the appellants made an application to summon the proprietor of M/s. Sudhakar Oil Mills for the purpose of cross-examining him but the request was rejected by the assessing authority who reopened the assessment. The appellants also filed affidavits of the brokers said to have been engaged both by the appellants as well as M/s. Sudhakar Oil Mills in connection with the sale and purchase of groundnut seeds. The affidavits given by the brokers contain the details of way bill numbers, lorry numbers and the numbers of the bank drafts handed over by M/s. Sudhakar Oil Mills and received by them through their counterparts at Hyderabad. In some cases, a tabular statement furnishing the bill-wise and

consignmentwise details with way bill numbers, vehicle numbers and details of bank drafts were filed. The assessing authority solely relying upon the letter of M/s. P. Sudhakar Oil Mills addressed to the Commercial Tax Officer, Osmanganj, confirmed the proposed reassessment. The assessing authority who passed the reassessment orders observed that the appellants failed to discharge the burden cast upon them to prove the genuineness of the transactions in dispute in rebuttal of the statement of the purchasing dealer. In the absence of proof to the effect that the purchasing dealer entered the transactions in his books of account and paid the tax thereon, the appellants became liable to pay the tax as last purchasers. It was further observed that the appellants did not produce any evidence to show that the proprietor of M/s. Sudhakar Oil Mills received the goods and that the way bills issued by the appellants did not furnish sufficient proof that the goods were actually received by the said dealer. With regard to demand drafts, he commented that the appellants could not furnish any evidence to show that the demand drafts were taken by the proprietor of M/s. Sudhakar Oil Mills with his own source of money.

4. The appellate authority, as already stated, allowed the appeal and set aside the reassessment orders. The appellate authority observed that the affidavits issued by the proprietor of M/s. Sudhakar Oil Mills bear five types of signatures. It was also commented that the signature on the admitted affidavit did not tally with the signature on the letter given by the proprietor of M/s. Sudhakar Oil Mills to the Commercial Tax Officer, Osmanganj on September 26, 1989. He observed that the signatures on some of the undisputed affidavits tallied with the signatures on the disputed affidavits. The appellate authority drew the inference that the mischief had been played by M/s. Sudhakar Oil Mills and the non-accountal of purchases by M/s. Sudhakar Oil Mills did not shift the liability to the appellants and the department has to proceed only against the proprietor of M/s. Sudhakar Oil Mills who is the last purchasing dealer. The appellate authority also found fault with the Commercial Tax Officer for not giving an opportunity to the appellants to cross-examine the proprietor of M/s. Sudhakar Oil Mills. He further observed that the appellants have proved with positive recorded evidence that they were not the last purchasers.

5. Let us see how the Commissioner of Commercial Taxes viewed and concluded while setting aside the appellate order in exercise of his revisional powers u/s 20 of the Act. The Commissioner observed that the "burden of proof" u/s 7-A denotes that the dealer should produce satisfactory proof, "not merely evidence which may create a probability or possibility". The Commissioner held that the burden of proving that the appellants were other than last purchasers was not discharged by the appellants. The correctness or otherwise of the transactions being within the exclusive knowledge of the assessee, the assessee has to produce conclusive evidence to discharge that burden. The non-accountal of purchases by M/s. Sudhakar Oil Mills and the alleged denial of transactions by the said dealer is made the sheet-anchor of the revision just as it was made the basis of reassessment. Filing the bills or evidence in support of transport of the

goods were found to be insufficient to discharge the burden of proof. Referring to the receipt of money by demand drafts, the learned Commissioner commented that the appellants "only cited one or two demand drafts which were issued on dates far removed from the dates of transactions", and it could very well be that the said demand drafts would have been received in connection with various other undisputed transactions with M/s. Sudhakar Oil Mills. Referring to the reasoning of the appellate authority that the signatures of the proprietor of M/s. Sudhakar Oil Mills in various affidavits differ from one another, the Commissioner observed that it was of no consequence. Another important observation made by the Commissioner was that the assessee "did not even produce a statement of account of M/s. Sudhakar Oil Mills in his books. To establish the total number of transactions, total amount received and other details". The Commissioner found no illegality in refusing to summon the proprietor of M/s. Sudhakar Oil Mills for cross-examination. In conclusion, the Commissioner set aside the order of the Appellate Deputy Commissioner and restored the reassessment orders passed by the Commercial Tax Officer, Kadiri.

6. It is contended by the learned counsel for the appellants that the appellants discharged the burden of proof cast on them and all the details were furnished before the assessing authority and that the appellate authority had not committed any illegality or impropriety in setting aside the reassessment orders for which there was no adequate basis. On the other hand, it is submitted by the learned Government Pleader that the revision is well justified in the light of the information gathered by the department and the appellants did not place before the Commissioner the facts and material within their exclusive knowledge. It is contended that the reasons given by the appellate authority for setting aside the reassessment orders passed by the Commercial Tax Officer are not proper and relevant.

7. Before we proceed further, we may notice the undoubted legal position relevant to the facts of the present case. u/s 7A of the Act, in case of an assessment made under sub-section (2) of section 5, that is to say, an assessment on the turnover of goods liable to be taxed at single point, the burden of proving that a sale or purchase effected by a dealer is not liable to any tax or is liable to be taxed at a reduced rate, is on the dealer. We are not concerned here with sub-section (1-A) which came into force from July 1, 1985, because it applies to the first sale or first purchase in the State. Thus, in order to claim immunity from tax on the ground that the appellants are not last purchasers, they having sold groundnut seeds to another dealer, the burden lay on the appellants to prove that the sales were effected to other dealers in the State. When once it is proved that there was such a sale, the appellants cannot be treated as last purchasers irrespective of the fact whether the purchasing dealer has accounted for the goods or paid tax thereon because the liability rests only on the last purchasing dealer. The burden of proof cast u/s 7A has to be discharged by the assessee by placing before the assessing authority the relevant accounts and documents. He is also under a duty to place all the

primary facts before the assessing authority including the facts which are within his exclusive knowledge. If, without the scrutiny of accounts and/or without regard to the basic facts requisite to come to a conclusion regarding which the assessee is in a position to throw light, the exemption is granted, it would be a case of illegal or improper exemption. But, it is well-settled that the burden of proof does not throughout rest on the dealer. When once the dealer has furnished relevant material in his possession and placed the primary facts before the assessing officer, the duty cast on him must be deemed to have been discharged. Whether or not the burden has been discharged satisfactorily by the assessee is a question regarding which a hard and fast rule cannot be laid down. It depends upon the facts of each case. The next principle to be noted is that revisional power cannot be exercised on conjectures and surmises. The revisional authority must have before him adequate basis and justification to upset the exemption already granted or the relief already allowed. As far as reassessment is concerned, it is now well-settled that the power u/s 14(4)(cc), cannot be exercised to withdraw an exemption already granted by mere change of opinion. Normally, reassessment proceedings are initiated on the basis of information or material subsequently coming to light and which did not form part of assessment record.

8. At the outset, we may deal with the contention raised by the learned counsel for the appellants that in these cases, the assessing authority had no jurisdiction to make reassessment invoking provisions u/s 14(4)(cc) of the Act. We are unable to uphold this contention as we are of the view that reassessment was taken up on the basis of the information received as a result of the departmental enquiries that the purchasing dealer did not account for the transactions. This constitutes sufficient justification for reopening the assessments irrespective of the question whether there are good grounds to withdraw the exemption granted already to the appellants on that ground alone. We do not regard it a case of mere change of opinion on the basis of the material already on record. When once certain additional material or information has come to the notice of the assessing authority, there was absolutely no legal bar to reopen the assessment and in the course of such reassessment proceedings, he can certainly refer to the accounts and other material already filed before the original authority. That is what exactly happened in this case. We, therefore, reject the contention that the very reopening of assessment is inflicted with a jurisdictional infirmity.

9. Now, we shall proceed to examine the correctness or otherwise of the order passed by the Commissioner of Commercial Taxes. As already noted, the Commissioner restored the reassessment order made by the Commercial Tax Officer. Hence, we have to consider whether the approach adopted by the assessing officer who made the reassessment and by the revisional authority, namely, the Commissioner, is legally correct and proper. The Commercial Tax Officer observed that the assessee is relieved of his liability to pay tax only when the dealer to whom he sells the goods accounts for the same in his books of accounts and pays tax due thereon. This approach, in our view, is untenable. The

law does not stipulate that the last purchasing dealer should have paid the tax on the purchases made by him or that he should have entered the purchase in his accounts. When once the sale and purchase is established, the liability to pay tax does not shift to the appellants merely because the purchasing dealer did not disclose his turnover fully and correctly or that he has not paid the tax. That is the view taken by a Divisional Bench of this Court in *State of A.P. v. Thungabhadra Industries Ltd.* [1986] 62 STC 71. However, the non-accountal of the goods by the purchasing dealer can be a ground to entertain a doubt on the genuineness of the transactions and may furnish a basis for a further probe, but it does not ipso facto falsify the assessee's claim. Another erroneous approach made by the assessing authority who passed the reassessment order was that he was under the impression that the proprietor of M/s. Sudhakar Oil Mills denied the purchases but there is no such statement in the letter relied upon by the Commercial Tax Officer. Obviously, the statement in the letter was misread by the Commercial Tax Officer. In fact, the Commissioner himself states in the impugned order that "the statement neither admits nor denies the transactions".

10. In the present case, there is no dispute that the purchaser, M/s. Sudhakar Oil Mills, is a real dealer registered with the department. It is also not in dispute that some of the purchases effected from the appellants were admitted by the proprietor of M/s. Sudhakar Oil Mills. Further, it is not in dispute that the assessing authority at the time of original assessment granted exemption in respect of the sales effected to M/s. Sudhakar Oil Mills based on the affidavits purportedly signed by its proprietor. The appellate authority gave a specific finding that though the proprietor of M/s. Sudhakar Oil Mills signed differently on different affidavits, the signatures on some of the affidavits relating to disputed transactions tallied with the affidavits relating to admitted transactions and also the signature on the letter furnished to the Commercial Tax Officer, Osmanganj. Therefore, it cannot be taken for granted nor can it be presumed that the affidavits on the basis of which the assessing authority acted, cannot at all form the basis for exemption. However, the fact remains that the purchases were not accounted for by M/s. Sudhakar Oil Mills. In such a situation, the minimum that is expected to be done by the assessing authority who proposed reassessment was to confront the proprietor of M/s. Sudhakar Oil Mills with the affidavits on record and to obtain his specific clarification as to whether the goods were purchased by him or not. That line of enquiry was not pursued at all. So also, when the appellants have given the particulars of the bank drafts by which they have received payments, the Commercial Tax Officer, should have caused verification made from the accounts of the purchasing dealer before entertaining a doubt with regard to the source of money. It could not have been difficult to ascertain firstly from the accounts or bank accounts of M/s. Sudhakar Oil Mills whether the money was drawn for the purpose of taking out the drafts on the relevant dates. The Commercial Tax Officer could have further verified from the bankers as to who applied for the bank drafts and to whom they were issued. Instead of making such crucial enquiry, the assessing authority as well as the

revisional authority wanted to place the blame squarely at the doors of the appellants and they expect the appellants to produce proof as to whether M/s. Sudhakar Oil Mills utilised its funds to purchase the bank drafts. It cannot be said that the dealers must be imputed with exclusive knowledge as regards the source of money for the drafts. It cannot be expected that the appellants will be able to secure the information in this regard from the banks after the lapse of so many years, nor is it reasonable to expect the appellants to ascertain the information from the purchasing dealer. As the disclosure of any such information will be detrimental to the interests of the purchasing dealer who had not accounted for the goods, the appellants cannot be expected to discharge the burden of getting the information from the purchasing dealer and placing it before the assessing authority. Having failed to make the necessary enquiries in this regard, it would be wholly unreasonable to make the appellants responsible for the non-disclosure of this information. The doctrine of burden of proof cannot be put in a straight-jacket formula nor could it be viewed in the abstract. A realistic approach is what is called for.

11. The Commissioner commented that the appellants furnished the details of only one or two drafts in each case but that is not correct. We have gone through the record. We find that the details of all the drafts ostensibly correlated to the disputed transactions were furnished by the appellant in reply to the show cause notice either in the form of a separate tabular statement or in the form of affidavits from the brokers. Yet another reason given by the Commissioner to discard the bank drafts was that they were far removed from the dates on which the goods were sold. But this again is an untenable reason. In the normal course of business, the possibility of amounts being received subsequent to the receipt of goods cannot be ruled out especially because the credit sales to a standing customer is not uncommon.

12. The assessing authority made an observation that the appellants should have produced proof of receipt of goods by M/s. Sudhakar Oil Mills. When the basic facts regarding the despatch and movement of goods to the place of business of the purchasing dealer together with the accounts including details of receipt of sale price are placed before the assessing authority, the reasonable presumption to be drawn is that the goods were in fact received. It would be irrational, if not perverse, to expect an acknowledgment from the purchasing dealer when he has not accounted for the goods and when any such acknowledgment would expose him to the risk of additional tax and penalties. For the same reason, the non-disclosure of the transactions in the accounts of M/s. Sudhakar Oil Mills cannot be considered to be a conclusive fact. Such non-accountal may very well be consistent with the fraud practised by the purchasing dealer himself. This is, in fact, the view expressed by the appellate authority. The appellate authority felt that M/s. Sudhakar Oil Mills having received the goods failed to account for some of the transactions with a view to evade the tax. The appellate authority may or may not be right in his observation, but we are not in a position to say that the appellants either failed to discharge the initial burden cast on them while

claiming the exemption or there is clinching evidence to indicate that the appellants manipulated their accounts and documents in order to create non-existent sales in favour of M/s. Sudhakar Oil Mills. The main and, perhaps, the only ground which weighed with the authorities was that M/s. Sudhakar Oil Mills failed to account for and report the turnover relating to disputed transactions, but that is not a circumstance which by itself leads to the inference that the appellants created evidence of fictitious transactions. It is a different matter if the appellants did not furnish the relevant material or information which was within their knowledge and thereby failed to discharge the burden of proof cast on them. But, to require the appellants to pay the tax for the reason that the purchasing dealer did not account for the transactions or report the turnover is by itself not a valid ground to withdraw the exemption already granted. In view of the fact that such non-accountal was in the interests of the purchasing dealer himself and apart from the bare statement given by the proprietor of M/s. Sudhakar Oil Mills that he did not account for the disputed transactions, no enquiry whatsoever was made by making a probe into his accounts and other records to ascertain whether the non-accountal was for the reason that he did not in fact receive or pay for the goods.

13. Thus, we find that the main basis of reassessment revision is unsustainable and most of the reasons given by the revisional authority reflect an erroneous approach to the crucial question that fell for his consideration. The theory of burden of proof has been carried beyond permissible limits to cover up the default in making further enquiries at the other end. We would have unhesitatingly set aside the revisional orders passed by the Commissioner and allowed the appellate order to remain but for one of the relevant comments made by the Commissioner. The learned Commissioner observed that the assessee did not even produce a statement of account pertaining to Sudhakar Oil Mills as per his books to establish the total number of transactions, the amounts received and other details. The Commissioner, in order to test the veracity of the appellants' version, had an undoubted power to examine whether the appellants' accounts reflected these transactions and the payments said to have been received were duly accounted for or not. When a doubt is entertained in this regard by the revisional authority and when the appellate authority has not said anything specifically on the correctness of these details, it was incumbent on the appellants to dispel the doubt by placing the relevant entries in their accounts before him. The accounts and the records of the appellant constitute primary evidence to establish the case of exemption and they are within the reach and knowledge of the appellants themselves. The Commissioner was, therefore, well within his rights in insisting upon the production of the statement of account. The learned counsel for the appellants clarified that the appellants were ready to produce the accounts or the account statements but as they were not called upon to do so, they could not furnish the same before the Commissioner. The account books have been produced before us and we made some random scrutiny but we are not in a position to conclude whether the

disputed transactions have been duly accounted for and whether the payments received as per the particulars of bank drafts given were incorporated in the books of accounts and other relevant records, such as bank pass books. No doubt, the appellants were under a duty to furnish the full information with reference to their accounts in the course of revision proceedings but we cannot reject the appellants' claim outright merely because such a step was not taken. The impugned order of the Commissioner does not show that the appellants failed to produce the account statement despite the fact that they were called upon to do so. The assessing authority who made the reassessment did not also comment anything adversely against the appellants with reference to the appellants' accounts. In these circumstances, we are not inclined to reject the appellants' case on the technical ground that the appellants should have furnished the extracts of account statements before the Commissioner especially when that is only one of the aspects that weighed with the Commissioner. In the circumstances, it appears to us that the just and proper course is to set aside the revisional and appellate orders as well as the reassessment orders and to direct the assessing authority to pass orders afresh vis-a-vis the disputed transactions after examining the accounts of the appellants. In other words, the assessing authority shall refrain from withdrawing the exemption if it is revealed on a scrutiny of the accounts and the records that the disputed transactions pertaining to sales effected in favour of M/s. Sudhakar Oil Mills were duly accounted for in the books of accounts and the payments were received through the bank drafts referred to by the appellants. It is also open to the assessing authority to verify whether the appellants' accounts reveal payments of commission to brokers who gave the affidavits and if not, what is the proper inference to be drawn therefrom. Thus, we are remanding the matter to the assessing authority for undertaking this limited scrutiny.

14. The special appeals are allowed to the extent indicated above. We make no order as to costs.

15. Appeals allowed.