(2014) 08 AP CK 0131

In the Andhra Pradesh High Court

Case No : TRC No. 152 of 2014

State of Andhra Pradesh APPELLANT

Vs

Sri Kishan Narayandas Malani RESPONDENT

Date of Decision : 22-08-2014

Acts Referred:

Citation : (2014) 59 APSTJ 83

Hon'ble Judges : Ramesh Ranganathan, J;M. Satyanarayana Murthy, J

Bench : Division Bench

Advocate : M. Govind Reddy, Special Standing Counsel, Advocates for the Appellant; A.K. Jaiswal, Advocates for the Respondent

Judgement

Ramesh Ranganathan, J.—Heard Sri M. Govind Reddy, Learned Special Standing Counsel for Commercial Taxes, and Sri A.K. Jaiswal, Learned Counsel for the respondent. This revision, under Section 22(1) of the Andhra Pradesh General Sales Tax Act, 1957 (the Act), read with Rule 10 of the APGST Rules, is preferred by the Revenue against the order of the Sales Tax Appellate Tribunal in T.A. No. 1046 of 2005.

2. The respondent herein is a registered dealer and an assessee on the rolls of the Commercial Tax Officer, Afzalgunj, Hyderabad. They carry on business in soda ash, bleaching powder etc. For the assessment year 2001-02 (APGST), the assessing authority assessed the petitioner to tax treating "bleaching powder" as ''Dyes & Chemicals'' and levied tax at 8%. The Deputy Commissioner (C.T.) revised the order holding that the assessing authority had misclassified bleaching powder as ''Dyes & Chemicals''; "bleaching powder" fell under the category of general goods; and was, therefore, liable to be taxed at 12% under the Seventh Schedule to the Act.

3. Aggrieved thereby, the respondent carried the matter in appeal to the Sales Tax Appellate Tribunal contending that "bleaching powder" was nothing but an inorganic chemical falling under Chapter 28 of the Central Excise Tariff; bleaching

powder was used mostly in textile and leather industry for the purpose of bleaching clothes and leather, and to make them more soft and fine; it fell under Entry 9 of the Sixth Schedule to the Act which deals with ''Dyes & Chemicals''; since no specific heading, under any of the Schedules, was available for "bleaching powder" they fell under the heading ''chemicals''; and they could not be taxed as general goods. The respondent relied on the judgment of the Kerala High Court in M.D. Joseph Vs. State of Kerala (2007) 10 VST 404 wherein it was held that "bleaching powder" was a chemical used as a disinfectant in water purification.

4. The Tribunal, after considering the judgment in M.D. Joseph Vs. State of Kerala, , observed that Entry 9 of the Sixth Schedule to the Act deals with chemicals; since there was no specific head for "bleaching powder" in any of the schedules to the Act, it was appropriate that it be classified under the head ''Dyes & Chemicals'' as "bleaching powder" was, undoubtedly, a chemical; a more specific or nearer entry should be applied in matters of classification; the revenue was, therefore, wrong in classifying "bleaching powder" as general goods; and the subject goods should have been classified as a chemical under Entry 9 of the Sixth Schedule to the Act.

5. Before us Sri M. Govind Reddy, Learned Special Standing Counsel for Commercial Taxes, would contend that, in the absence of a specific entry in any of the schedules to the Act relating to ''bleaching power'', these goods could only have been classified as "general goods" and taxed under the Seventh Schedule to the Act.

6. It is no doubt true that there is no specific entry, in any of the schedules to the Act, relating to bleaching powder. It is also not in dispute that "bleaching powder" is a chemical. Entry 9 of the Sixth Schedule, which relates to ''Dyes & Chemicals'', is the more specific entry compared to the Entry relating to "general goods", under the Seventh Schedule to the Act. As bleaching powder is also a chemical, the Tribunal has rightly upheld the order of the assessing authority in treating "bleaching powder" as a chemical and taxing the subject goods under Entry 9 of the Sixth Schedule to the Act. The order of the Tribunal does not suffer from any legal infirmity necessitating exercise of the revisional jurisdiction of this Court. The TR.E.VC is, accordingly, dismissed. Miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

