(1991) 02 AP CK 0004

In the Andhra Pradesh High Court

Case No : T.R.C. No''s. 26, 59, 111, 113 and 119 of 1990

State of Andhra Pradesh — APPELLANT

Vs

Sri Venkateswara Trading Co. — RESPONDENT

Date of Decision : 19-02-1991

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 22, 5, 5(1), 5(2), 6
Central Sales Tax Act, 1956 — Section 14, 15

Citation : (1991) 1 ALT 624 : (1991) 1 APLJ 469 : (1991) 83 STC 220

Hon'ble Judges : Yogeshwar Dayal, C.J;Upendralal Waghray, J

Bench : Division Bench

Advocate : M. Ramaiah, the Government Pleader for Commercial Taxes, for the Appellant; A.K. Jaiswal, for the Respondent

Judgement

Yogeshwar Dayal, C.J. and Upendralal Waghray, J.—This batch of tax revision cases and filed by the State of Andhra Pradesh u/s 22 of the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter called "the Act") against a common judgment of the Sales Tax Appellate Tribunal dated August 18, 1988, by which it has allowed several appeals filed by the assessees.

2. The controversy is about the rate of tax on "ravva" made from rice for the period prior to the amendment of the Act by Amendment Act 18 of 1985. It is common case that such rice has not suffered sales tax but whether paddy from which it was extracted has suffered tax under the Act or not was considered irrelevant by the authorities. The facts in T.R.C. No. 26 of 1990 arising out of the Tribunal Appeal No. 264 of 1985 pertaining to the assessment year 1981-82 are considered as illustrative of the controversy. The assessing authority, viz., the Commercial Tax Officer, has brought to tax such "ravva" under item 144(a) of the First Schedule at 5 per cent. This was confirmed in appeal by the Deputy Commissioner. The Tribunal has taken the view that it is exigible under item 144(b) of the First Schedule at 1 per cent. This decision of the Tribunal is assailed before us.

3. Before the Tribunal three points were urged, viz., (1) that "ravva" continues to be the same commodity as rice and hence not liable to be taxed; (2) the assessees are entitled to exemption under G.O. Ms. No. 1061. Revenue dated November 8, 1974, by which "ravva" was liable to be taxed only at 1 per cent; (3) that this commodity was taxable only at 1 per cent and the amendment made to item 144(b) of the First Schedule to the Act by Act 18 of 1985 with effect from July 1, 1985, is only clarificatory in nature. The Tribunal has rejected the first two contentions, but has accepted the third contention of the assessees.

4. The learned Government Pleader has contended that the amendment of item 144(b) of the First Schedule by Act 18 of 1985 with effect from July 1, 1985, does not have a retrospective effect and, therefore, for the earlier assessment years the assessees have to pay the tax at 5 per cent as contemplated by item 144(a), as they have not provided that "ravva" was made from rice which has suffered tax.

5. It is useful to briefly notice the history of rates of tax of this commodity under the Act. By Act 16 of 1963, "ravva" was included as item 59 of the First Schedule and it was taxable at the point of first sale in the State at 1 per cent. The First Schedule consists of items which are taxable at a single point according to section 5(2) of the Act. The item "ravva" can be made from wheat, rice or maize, all of which are declared goods. By Act 5 of 1974 the said item 59 of the First Schedule was omitted and a distinction was made between "ravva" extracted from wheat and "ravva" extracted from rice and maize. "Ravva" extracted from wheat was separately numbered as item 60 of the First Schedule under which "ravva", maida and atta obtained from wheat that had met tax under the Act was taxable at 1 per cent, while these commodities extracted from wheat which has not met such tax were taxable at 4 per cent and the wheat itself was taxable at 3 per cent. The result was that "ravva" extracted from cereals other than wheat become taxable as general goods u/s 5(1) of the Act at multiple points. Apparently, for this reason, the Government issued exemption notification u/s 9 in G.O. Ms. No. 1061, Revenue dated November 8, 1974, granting exemptions for "ravva" (except obtained from wheat). The exemption granted was two-fold, viz.,

"1. ....the sales of ravva of all types (except ravva obtained from wheat) at the stages of sale except at the stage of first sale by a dealer in the State from the tax payable under sub-section (1) of section 5 of the said Act.

2. ....in respect of ravva of all types (except ravva obtained from wheat) shall be at the rate of 1 paisa in the rupee, provided the main product out of which ravva has been obtained, has already been subjected to tax under the said Act."

6. The effect of the exemptions and the entry 60 regarding wheat is that "ravva" extracted from any cereal was taxable only at a single point at 1 per cent, if the main commodity out of which it is obtained has suffered tax. Even though

"ravva" from rice was exigible to multiple point tax u/s 5(1) of the Act at a higher rate, the Government granted exemption. This G.O. has been rescinded by G.O. Ms. No. 571, Revenue dated August 8, 1988 (i.e., after the judgment of the Tribunal).

7. By Act 49 of 1976, "ravva" extracted from all cereals was included as item 144 of the First Schedule. There was a consequential amendment of the entry 60 from which "ravva" made out of wheat was omitted. Entry 144 in the First Schedule read as follows :

-- "144. Ravva (a) Not covered by At the point of 4 paise in the item (b) below first sale in rupee. the State. (b) Obtained from do. 1 paisa in the wheat, rice or maize, rupee." that has met tax under this Act. --

By Act 18 of 1985 which was enforced from July 1, 1985, item (b) of entry 144 of the First Schedule was amended as follows; "obtained from wheat, rice including paddy out of which rice is produced or maize that has met tax under this Act". As noticed earlier, the controversy is regarding the period prior to the amendment by Act 18 of 1985. However, for completing the narration of the history of rates of tax it is useful to notice that subsequently, by Act 4 of 1989 and G.O. Ms. No. 130. Revenue dated February 14, 1989, with effect from February 15, 1989, clause (b) of the said entry 144 is substituted as under :

"(b) .... obtained from rice including paddy out of which rice is produced that has met tax under this Act - 1 per cent;

(c) .... obtained from maize - 1 per cent at the point of first sale in the State."

8. It will be noticed that "ravva" made from wheat is omitted from item 144. This is because the rate of tax on wheat and also ravva and maida extracted from wheat was reduced to 1 per cent at a single point by the same legislation.

9. By the Amendment Act 103 of 1976, section 14 of the Central Sales Tax Act, 1956, was amended by including the cereals, paddy and rice as declared goods. It is useful to refer to section 15(c) of the Central Sales Tax Act, 1956 :

"15. Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State :

(a) ....

(b) ....

(c) where a tax has been levied under that law in respect of the sale or purchase inside the State of any paddy referred to in sub-clause (i) of clause (i) of section 14, the tax leviable on rice procured out of such paddy shall be reduced by the amount of tax levied on such paddy;"

10. Section 6 of the Andhra Pradesh General Sales Tax Act, 1957, provides for taxation of declared goods at single point in accordance with the provisions of the Third Schedule and these have to comply with the requirements of the provisions of the Central Sales Tax Act. It was at about this time that by the State Amendment Act 49 of 1976, as noticed earlier, "ravva" whether extracted from wheat, rice or maize was put as one entry, viz., 144 of the First Schedule. Again by the Third Amendment Act, that is, 59 of 1976, "ravva" extracted from wheat was deleted from item 60 of the First Schedule. The Third Schedule was also amended by adding the newly declared goods. We are concerned with entries 21 and 22 so introduced and explanation III which reads as follows :

-- "21. Paddy (Oryza At the point of last purchase 4 paise in the sativa L) : in the State. rupee. Provided that no tax shall be levied on the purchase of paddy by a dealer where tax is levied under this Act on the sale by or purchase from, such dealer, or rice procured out of such paddy. 22. Rice (Oryza At the point of first sale 4 paise in the sativa L) in the State. rupee." Provided that .... Explanation II. - Explanation III. - For the purposes of items 21 and 22, where a tax has been levied under this Act in respect of the sale or purchase inside the State of any paddy, the tax leviable on rice procured out of such paddy shall be reduced by the amount of tax levied on such paddy. ---

11. By Act 3 of 1981, the entry 21 was amended by deleting the proviso and substitution the exigibility to tax on paddy at point of first purchase in the State.

12. It is well-known that our State is one of the main producers of paddy and has the largest number of rice mills having large capacities in the country. Both paddy and rice are declared goods since 1976 and the rate of tax is the same on both, viz., 4 per cent. Paddy and rice are subjected to tax at the point of first purchase in the State and on the point of first sale in the State, respectively. In view of the explanation III to the Third Schedule where paddy has suffered tax under the Act, any tax leviable on rice procured out of such paddy shall be reduced by the amount of tax levied on paddy. We have to keep in view section 15(c) of the Central Sales Tax Act also. Generally, rice is extracted from paddy grown within the State and the paddy would have suffered tax at the point of its purchase. For practical purposes, no tax will be payable in respect of rice which is extracted from paddy, if paddy has suffered tax. "Ravva" is no doubt a distinct commercial commodity. It can be made from wheat, maize or rice extracted from paddy but not from paddy directly. A very small percentage of rice produced in the State is made into "ravva". Ignoring the circumstance whether paddy has suffered tax or not and insisting that rice must have suffered tax for determining the exigibility to tax of "rice ravva" is apparently irrational. If this background is kept in view, we can understand the intention and language of the second clause of exemption in G.O. Ms. No. 1061 Revenue dated November 8, 1974 - in respect of "ravva" of all types .... provided that the main product out of which "ravva"

has been obtained has already been subjected to tax under the said Act. While enacting entry 144(b) by Act 49 of 1976, the language indicates where "ravva" is obtained from wheat, rice or maize that has met tax under this Act, a rate of 1 paisa in the rupee is levied as tax. The purpose of entry 144(b) as it stood at the relevant time was to ensure that wherever the main product out of which "ravva" is obtained has already been subjected to tax under the Act, the tax leviable should be only at 1 paisa in the rupee. There is no purpose in treating "rice ravva" separately and insisting that rice must have suffered tax ignoring the fact whether paddy has suffered tax or not. As pointed out earlier, rice would get the benefit of tax paid on paddy from which it is extracted. While making the assessment in respect "ravva" the benefit of the tax paid on paddy has to be taken into consideration. It is for this reason that the Legislature has brought in the amendment by Act 18 of 1985 clarifying the position. This has been further clarified by Act 4 of 1989.

13. "Ravva" including "rice ravva" has throughout been subjected to tax at single point at 1 paisa in the rupee provided the main product out of which it was obtained has already been subjected to tax under the Act. G.O. granting exemption was rescinded only after the judgment of the Tribunal as noticed earlier. Though the Tribunal has held that the G.O. to be not applicable, as there has been a subsequent change of the taxability from section 5(1) to section 5(2) of the Act, the circumstance that the Government have rescinded it after the appeal is disposed of the also indicates that there was an assumption that the benefit of the G.O. was still available. Without going into the aforesaid controversy about the rescinding of G.O. in 1988 it has to be held that taxation on "ravva" made from rice after introduction of item 144(b) by Act 49 of 1976 was only 1 per cent, if the rice or paddy had suffered tax and the subsequent legislations are only clarificatory in nature. The conclusion of the Tribunal is, therefore, correct and the T.R.C. No. 26 of 1990 is dismissed.

14. For the same reasons the other T.R.C. Nos. 59, 111, 113 and 119 of 1990 which relate to different assessees for different assessment years but raise the same controversy are also dismissed.

15. Petitions dismissed.

