(2013) 07 AP CK 0040

In the Andhra Pradesh High Court

Case No : TREVC. No''s. 7 and 95 of 2013

State of Andhra Pradesh		APPELLANT
	Vs	
Venkatramana Enterprises		RESPONDENT

Date of Decision : 29-07-2013

Acts Referred:
Andhra Pradesh General Sales Tax Act, 1957 — Section 20(2), 22(1)

Citation : (2013) 57 APSTJ 154

Hon'ble Judges : G. Rohini, J;Challa Kodanda Ram, J

Bench : Division Bench

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

Judgement

G. Rohini, J.—These two revision cases are preferred by the State u/s 22(1) of A.P. General Sales Tax Act, against the orders passed by the Sales Tax Appellate Tribunal, A.P. Visakhapatnam Bench, in T.A. No. 228 of 2005 dated 21.06.2012 and in T.A. No. 817 of 2003 dated 14.12.2011 respectively. The respondent in TREVC. No. 7 of 2013 is a registered dealer who is carrying on the business in Corriander. The assessment order made under the A.P. General Sales Tax Act for the Assessment Year 1997-98 was revised by the Deputy Commissioner holding that certain turnovers did not suffer tax even though certificates were issued stating that tax and cess was paid on the said turnover. Aggrieved by the said order the dealer preferred an appeal before the Tribunal which was allowed by the order under revision and the order of the Deputy Commissioner was set aside.

2. The respondent in TREVC. No. 95 of 2013 is also a registered dealer who is carrying on the business in Corriander. The final assessment order passed by the Commercial Tax Officer for the Assessment Year 1997-98 was revised by the Deputy Commissioner on the very same ground that certain turnovers did not suffer tax inspite of the fact that certificates were issued stating that tax and cess was paid on the said turnover. Aggrieved by the said order the respondent

preferred an appeal before the Tribunal which was allowed by the order under revision and the order of the Deputy Commissioner was set aside. The said orders passed by the Tribunal are questioned in these two revision cases filed by the State.

3. The question of law formulated in both the revisions reads as under:

Whether the Tribunal ought to have remanded the case when there is infraction of natural justice?

4. We have heard the learned counsel for both the parties.

5. As could be seen from the material available on record the assessment made by the Deputy Commercial Tax Officer-II, Ongole was revised by the Deputy Commissioner of Commercial Taxes, Nellore in exercise of powers u/s 20(2) of the A.P. General Sales Tax Act, 1957. Aggrieved by the same the assessees preferred appeals and by the orders under revision, the Appellate Tribunal held that the revisional order passed by the Deputy Commissioner of Commercial Taxes is unsustainable and accordingly set aside the same.

6. The only contention raised before us is that having held that the order passed by the Deputy Commissioner is in violation of the rule of audi-alteram-partem, the Appellate Tribunal ought to have remanded the matter.

7. Having gone through the orders of the Appellate Tribunal we found that the orders of the Deputy Commissioner were set aside by the Appellate Tribunal not only on the ground that it was in violation of the principles of natural justice, but the Appellate Tribunal had also gone into the merits of the case and recorded findings on appreciation of the material available on record.

8. The fact that the appellate Tribunal has gone into the merits of the case is evident from the following findings recorded by the Tribunal itself:

Coming to the facts of the case, the DC observed that there could not be huge profit on second sales and loss on the first sales. He estimated the turnovers and passed revision orders. On scrutiny, it is noticed that no attempt was made to compare the prices of the commodity with the dealers of the same area who were dealing with the same commodity. The existing market rates were not obtained and not compared with those prices to ascertain variation if any. In the absence of such investigation, we have to hold that the revision is only based on presumptions and assumptions. The estimation is not based on valid grounds. That being the position, the revision orders based on estimation cannot be sustainable.

9. Therefore, we do not find any substance in the contention raised by the learned Counsel for the petitioner that the Appellate Tribunal ought to have remanded the matter to the Deputy Commissioner. Accordingly, the Tax Revision Cases are dismissed. No costs.