(1995) 01 AP CK 0025

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 108 of 1994

Telangana Bone Mill and Fertilizer Co. — APPELLANT

Vs

The State of A.P. — RESPONDENT

Date of Decision : 23-01-1995

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 22

Citation : (1995) 1 ALT 679 : (1995) 1 APLJ 171

Hon'ble Judges : T.N.C. Rangarajan, J;Syed Shah Mohammed Quadri, J

Bench : Division Bench

Advocate : A.V.S. Ramakrishnaiah, for the Appellant; G.P., for the Respondent

Final Decision : Dismissed

Judgement

1. This is the assessee''s revision u/s 22 of the Andhra Pradesh General Sales Tax Act (for Short "the State Act"). The assessee challenges the validity of the order of the Tribunal, dated 2-9-93 dismissing the assessee''s appeal against the order of the revising authority.

2. The assessee is carrying on business of exporting bone-meal, bone-sinews etc. He purchases in the local market raw bones, crushes the bones and the produce of bone-meal and bone-sinews are exported. It is the assesse''s Case that, on purchase of the bones, in view of Section 5(3) of the Central Sales Tax Act (for short "the Central Act"), no sales tax can be levied. The assessing authority upheld the contention and exempted the turn-over relating to purchase of raw bones u/s 5(3) of the Central Act r /w. Section 38 of the State Act. That order of assessment was revised by the Deputy Commissioner of Commercial Taxes, Nizamabad u/s 20 of the State Acton May 29, 1990. The revising authority came to the conclusion that the purchase of raw bones were from unregistered dealers and were used by the assessee in the process of manufacture of their product and they were liable to pay tax u/s 6-A of the State Act. The assessee appealed against the said order of the revising authority. By a common order dated 2-9-93 the Tribunal dismissed the appeal. It is the correctness of that

order of the Tribunal that is assailed in this Tax Revision Case.

3. Mr. A.V.S. Ramakrishnaiah, the learned counsel for the petitioner, vehemently contends that the Tribunal ought to have considered the questions as to whether Section 5 of the Central Act was attracted and whether u/s 38 of the State Act the disputed turnover was taxable. This point was not urged before the Tribunal and this is not disputed. What the learned counsel submits is whether a point of law is urged before the Tribunal or not, the Tribunal is bound to look into all the papers and records, find out the question of law and decide the same. He relies on the wording of Section 22 of the State Act which runs as follows:-

22. Revision by Special Appellate Tribunal:

(1) Within ninety days from the date on which an order under Sub-section(4) of Section 21 was communicated to him the dealer or the authority prescribed in this behalf may prefer a petition to the Special Appellate Tribunal against the order on the ground that the Appellate Tribunal has either decided erroneously or failed to decide any question of law.

4. From a perusal of the provision, extracted above, it is clear that against the order of Appellate Tribunal a revision is maintainable on the ground that the Tribunal either decided erroneously or failed to decide any question of law. Relying on the phase "failed to decide any question of law" the learned counsel made the contention referred to above.

5. We are unable to read the provision as contended before us. The ground available for the petitioner u/s 22 of the State Act for not deciding a question of law arises only when the question of law, either in writing or orally was urged before the Tribunal, but the Tribunal had omitted to decide the same. In a case where the point was not urged, the Tribunal was not bound to address itself to such a question of law. If we accept this contention it would result in burdening the Tribunal with the duty of searching out the questions of law for the parties who could never have dreamt of the same or about which they have had no grievance or ''complaint. This obviously cannot be the intendment of the Legislature in providing the right of revision u/s 22 of the State Act. See Commissioner of Income Tax v. Scindia Steam Navigation Co. Ltd. (1996) 42 ITR 589.

6. For these reasons we find no ground to admit the Revision Petition and it is accordingly dismissed.

