
(1983) 04 AP CK 0020

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 20 of 1983

The State of Andhra Pradesh

APPELLANT

Vs

Thungabhadra Industries Ltd.

RESPONDENT

Date of Decision : 22-04-1983

Acts Referred:

Citation : (1986) 62 STC 71

Hon'ble Judges : K. Madhava Reddy, C.J;A. Lakshmana Rao, J

Bench : Division Bench

Advocate : The Government Pleader for Commercial Taxes, for the Appellant;

Judgement

Madhava Reddy, C.J.—The assessee in this case claims to be the second seller of groundnut oil in the State of Andhra Pradesh. He is a registered dealer. Groundnut oil is exigible to tax under the A.P. General Sales Tax Act on first sale within the State. The petitioner claimed exemption of a large amount of turnover on the ground that he is the second seller, and mentioned the names of the registered dealers from whom he had purchased. A show cause notice was issued with an annexure thereto giving the names of the persons from whom the dealer claims to have purchased groundnut oil within the State and on that basis claimed exemption and stated that they were not registered dealers and therefore the assessee was not entitled to exemption.

2. The assessing authority granted the exemption claimed by the assessee holding that the turnover related to second sales of groundnut oil within the State. The Deputy Commissioner, however, revised the order holding that certain dealers from whom the assessee claims to have purchased were fictitious and the alleged first sales were not subjected to tax. The matters were carried in appeal to the Tribunal both by the department and the assessee. The Tribunal applying the two tests laid down in T.A. No. 401/75 confirmed in T.R.C. No. 17 of 1978 (B. Rajendra Oil Mills Refinery v. State of Andhra Pradesh; printed infra) disposed of the matter which now forms the subject-matter of the present T.R.C. The two tests applied to determine whether the assessee is entitled to the

exemption of turnover from tax were (1) that the first seller should be a real and identifiable dealer within the State and (2) that mere non-payment of tax by first seller within the State does not shift the liability to pay tax on the second seller. In disposing of the matter, the Tribunal has, in our opinion, rightly applied the said tests and on the facts and circumstances of the case after verifying the records granted relief in respect of the purchases made by the assessee from real and identifiable sellers within the State whose registration number was mentioned in the bills. In respect of some other dealers whose registration numbers were mentioned, the Deputy Commissioner had disallowed the exemption for want of sufficient record. But on verification by the Tribunal they were found to be real and identifiable dealers and therefore the Tribunal granted exemption. In respect of some others, even the Tribunal came to the conclusion that although certain registration numbers of the dealers were mentioned in the bills, they were not real and identifiable dealers within the State and disallowed the exemption claimed by the assessee. In so far as the assessee's claim was allowed by the Tribunal, the department has filed T.R.C. and in so far as the assessee's claim was disallowed, the assessee has filed T.R.C. Both the T.R.Cs. must be dismissed having regard to the fact that the correct tests enunciated in T.R.C. No. 17 of 1978 (printed infra) have been applied and on the assessment of the facts appropriate relief was granted.

3. The T.R.C. is, therefore, dismissed. No costs. Advocate's fee Rs. 150.

4. Petition dismissed.