(2001) 09 AP CK 0009

Andhra Pradesh High Court

Case No: Writ Petition No. 11886 of 1995

Tirupathi Roller Flour Mill Pvt. Ltd.		APPELLANT
	Vs	
Government of Andhra Pradesh and Another		RESPONDENT

Date of Decision: Sept. 14, 2001

Acts Referred:

- Constitution of India, 1950 - Article 14, 301, 302, 303, 304

Citation: (2002) 126 STC 11

Hon'ble Judges: S.R. Nayak, J; S. Ananda Reddy, J

Bench: Division Bench

Advocate: G.V.R.S. Vara Prasad, for the Appellant; The Special Government Pleader for Taxes, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S.R. NAYAK, J.
The petitioner is running a wheat roller flour mill and is an assessee on the rolls of the Commercial Tax Officer, Mehdipatnam Circle, Hyderabad for the purpose of assessment under the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter referred to as "the Act") and also the Central Sales Tax Act.

2. The petitioner manufactures wheat products like atta, ravva and maida from wheat, which is the raw material. Since wheat is not grown in Andhra Pradesh, the petitioner purchases wheat from Food Corporation of India or from wheat growing States like Punjab, Maharashtra, Madhya Pradesh, etc. Wheat is one of the declared goods under the Act. For the assessment year 1993-94, the assessing officer, namely, the Commercial Tax Officer, second respondent herein issued a show cause notice in G.I. No. 27043/93-94, dated February 28, 1995 to the petitioner herein proposing to complete the assessment as under :

Gross turnover	...	Rs. 7,92,09,856.19
Exempted turnover	...	Rs. 2,52,74,529.66
Net turnover	...	Rs. 5,39,35,327.53
		At different rates.

In the said show cause notice, the second respondent proposed to levy the basic rate of tax at 2 per cent on the wheat products of atta, ravva and maida manufactured during the year out of the imported wheat purchased from outside the State plus usual incidental taxes like additional tax/turnover tax and surcharge. The petitioner filed objections to the said show cause notice on March 22, 1995 stating that there cannot be two rates of tax on the same products sold differentiating the products basing on the raw material used, namely, tax suffered raw material and raw material which has not suffered tax. It is contended in reply that the levy of basic tax at 2 per cent on the locally purchased wheat as against 1 per cent tax on the products manufactured from imported wheat is contrary to law and discriminatory.

3. The plea of the petitioner was rejected by the assessing officer and he taxed differently in terms of the proposal made in the show cause notice and completed the assessment for the assessment year 1993-94. At that stage the writ petition was instituted in this Court on June 12, 1995. It is stated that subsequently assessment for the assessment year 1994-95 was also completed by the assessing officer.

4. In this writ petition, the petitioner has sought for the following relief :

"For the reasons mentioned in the accompanying affidavit, the petitioner herein prays that this honourable court may be pleased to issue a writ or an order or a direction more particularly one in the nature of writ of mandamus declaring the different rates of tax prescribed under Sl. Nos. 60(a) and (b) of the First Schedule to the APGST Act for the assessment years 1993-94 and 1994-95 in respect of atta, ravva and maida as discriminative and violative of Article 404(a) of the Constitution of India and consequently direct the respondents herein to charge tax at 1 per cent uniformly on the sales of atta, ravva and maida effected by the petitioner and refund the excess amount of tax collected from the petitioner for the assessment years 1993-94 and 1994-95 and pass such other order or orders as are deemed fit and proper in the circumstances of the case, as otherwise the petitioner would be put to serious loss and irreparable damage."

5. Though the respondents are served with notice and they are represented by the learned Special Government Pleader, they have not filed any counter-affidavit.

6. The learned counsel appearing for the petitioner, placing strong reliance on the judgment of the apex Court in Anand Commercial Agencies v. Commercial Tax Officer, Hyderabad [1997] 107 STC 586 : AIR 1998 SC 113 and also a judgment of the division Bench of this Court in Crane Betel Nut Powder Works v. State of Andhra Pradesh [2000] 117 STC 200 : (1999) 29 APSTJ 316 submits that the entry 60(a) of the

First Schedule to the APGST Act providing for levy of tax at 2 per cent is ex facie arbitrary, discriminatory and violative of Article 14 of the Constitution of India. Elaborating the contention, the learned counsel would maintain that there cannot be two rates of tax in respect of the same products sold, making an artificial classification between the products basing on the raw material, namely, in the present case, wheat, which has suffered tax and the same raw material, which has not suffered tax.

7. The learned Special Government Pleader for Taxes too quite fairly brought to our notice another recent judgment of a three-Judge Bench of the Supreme Court in I.T.C. Agro Tech Ltd. etc. etc. Vs. Commercial Tax Officer and Others, , where a similar opinion to the decision taken by the Supreme Court in Anand Commercial Agencies Vs. The Commercial Tax Officer VI Circle, Hyderabad and Others, , has been taken. In Anand Commercial Agencies v. Commercial Tax Officer [1997] 107 STC 586 : AIR 1998 SC 113 the appellant, namely, Anand Commercial Agencies was a partnership firm. The dispute brought before the apex court arose in the course of assessment for the assessment year 1977-78. Under entry 24(b) of the First Schedule to the Act, tax is payable on groundnut oil at the rate of 2 1/2 paise per rupee of the sale price. Under entry 24(a), tax is payable on groundnut oil or refined oil obtained from groundnut, which has not borne any tax under the A.P. Act at the rate of 61/2 paise per rupee of the sale price. The assessee at the relevant period had a total turnover of Rs. 31,35,000 out of which Rs. 14,76,000 was on account of sale of groundnut oil and refined oil obtained from groundnut, which had not borne tax under the A.P. Act because the oil was imported into Andhra Pradesh from the State of Karnataka. It was contended by the appellant-assessee that the oil had been extracted out of groundnuts which had borne tax under the Karnataka Sales Tax Act and that the levy of tax on the oil imported from Karnataka into Andhra Pradesh at a rate higher than the rate at which the oil manufactured in Andhra Pradesh is taxed is. discriminatory and violative of the appellant''s right of freedom of trade and commerce throughout India, This contention was rejected by the Sales Tax Officer and also by the Assistant Commissioner (C.T.), Appeals and the High Court in continued proceedings. The Supreme Court, while reversing the judgment of this Court, has opined that the classification made under entry 24(a) and (b) on the basis, whether the raw material has suffered tax or not suffered tax, is discriminatory, offending the assessee''s right of freedom of trade and commerce, guaranteed under Articles 301 - 304 of the Constitution of India. So opining the apex Court held that the groundnut oil imported by the appellant from the State of Karnataka for sale in Andhra Pradesh cannot be taxed at a rate higher than the rate prescribed in Clause (b) of entry 24 of the First Schedule to the Andhra Pradesh Act.

8. The facts of this case are also specifically identical to the facts in Anand Commercial Agencies Vs. The Commercial Tax Officer VI Circle, Hyderabad and Others, . In addition a division Bench of this Court in Crane Betel Nut Powder Works v. State of Andhra Pradesh [2000] 117 STC 200 : (1999) 29 APSTJ 316 basing on the

judgment of the Supreme Court in Anand Commercial Agencies v. Commercial Tax Officer, Hyderabad [1997] 107 STC 686 : AIR 1998 SC 113 held that entry 158(a) of the First Schedule to the Act, which seeks to levy higher rate of tax on betel nut powder, imported from other States or manufactured from out of arecanut, which has not suffered tax in the State is violative of Articles 14 and 301 - 304 of the Constitution and is therefore declared as illegal and ultra vires of the Constitution of India.

Further, in a recent judgment in I.T.C. Agro Tech Ltd. v. Commercial Tax Officer [2001] 124 STC 1 : 2001 (4) DT 159 (SC) a three-Judge Bench of the apex Court reiterated the principle stated by it in Anand Commercial Agencies v. Commercial Tax Officer, Hyderabad [1997] 107 STC 586 : AIR 1998 SC 113.

9. In that view of the matter and for the foregoing reasons, we declare that entry 60(a). of the First Schedule to the APGST Act in so far as it imposes higher rate of tax on the atta, ravva and maida obtained from wheat, which has not suffered tax under the APGST Act, while imposing a lower rate of tax on the same products, which has not suffered tax under entry 60(b), as illegal, ultra vires and violative of Articles 14 and 301 - 304 of the Constitution of India. Consequently a direction shall issue to the respondents to levy tax on the sales of atta, ravva and maida manufactured by the petitioner, as required under Clause (b) of entry 60 of the First Schedule to the Act by passing reassessment orders for the assessment years 1993-94 and 1994-95. The writ petition is accordingly disposed of.