

(1997) 09 AP CK 0007

Andhra Pradesh High Court

Case No: Special Appeal No's. 28 and 29 of 1994

Sri Kanakadurga Paddy and
Processing I.C.S. Ltd.

APPELLANT

Vs

Commissioner (C.T.),
Government of Andhra Pradesh
and Others

RESPONDENT

Date of Decision: Sept. 22, 1997

Acts Referred:

- Andhra Pradesh General Sales Tax Act, 1957 - Section 14, 20(1), 6, 9
- Central Sales Tax Act, 1956 - Section 14, 15

Citation: (1998) 110 STC 173

Hon'ble Judges: S.S. Mohammed Quadri, J; J. Chelameswar, J

Bench: Division Bench

Advocate: Y. Ratnakar, for the Appellant; Special Government Pleader for Taxes, for the Respondent

Judgement

Syed Shah Mohammed Quadri, J.

These two special appeals are directed against the order of the Commissioner of Commercial Taxes, passed in exercise of revisional jurisdiction u/s 20(1) of the Andhra Pradesh General Sales Tax Act, 1957 (for short, "the APGST Act").

2. The appellant in these two appeals is common but the periods for which assessments are made, are different. Special Appeal No. 28 of 1994 relates to the period from April, 1992 to October, 1992 and Special Appeal No. 29 of 1994 relates to the period from November, 1992 to January, 1993.

3. The Government of Andhra Pradesh, by orders issued in G.O. Ms. No. 2566, Revenue (S), dated June 11, 1980, in exercise of the power u/s 9 of the APGST Act, exempted processing of cereals and pulses from the tax payable under the APGST Act on the purchases and the sales of the goods made by the categories of industrial

units, financed by the Andhra Pradesh Khadi and Village Industries Board and the Khadi and Village Industries Commission. The question which arises for consideration in these appeals is :

"Whether the exemption granted by the said G.O. Ms. No. 2566, Revenue (S), dated June 11, 1980 applies to the cases of the appellant ?"

4. The appellant was assessed to tax under the APGST Act by the Commercial Tax Officer, Eluru, on the turnover for the abovesaid periods. The appeals preferred by the appellant were allowed by the Appellate Deputy Commissioner. Finding the orders of the Appellate Deputy Commissioner erroneous and also prejudicial to the interests of the Revenue, the Commissioner of Commercial Taxes revised the orders on January 17, 1994. It is the validity of that order that is assailed in these appeals.

5. Mr. Y. Ratnakar the learned counsel for the appellant, contends that the scope of the depression "cereals and pulses" should be understood in terms of the enumeration u/s 14 of the APGST Act (sic) and the exemption should not be confined only to the items falling under entry 20 of the Third Schedule of the APGST Act.

Heard the learned Special Government Pleader for Taxes.

We are unable to accept the contention of the learned counsel for the appellants. The expression "cereal" is understood in English language to mean :

"Of corn or edible grain, kind(s) of grain used for human food; food made from wheat, maize, or other cereal (usually as breakfast dish)".

For purposes of declared goods u/s 14 of the Central Sales Tax Act, 1956 (for short, "the CST Act") the following ten items are enumerated, viz.,

"(1) Cereals, that is to say. -

(i) paddy (*Oryza sativa* L);

(ii) rice (*Oryza sativa* L);

(iii) wheat (*Triticum vulgare*, *T. Compactum*, *T. Sphaerococcum*, *T. Durum*, *T. aestivum* L, *T. Dicoccum*);

(iv) jowar or milo (*Sorghum vulgare* Pers);

(v) bajra (*Pennisetum typhoideum* L);

(vi) maize (*Zea mays* L);

(vii) ragi (*Eleusine coracana* Gaertn);

(viii) kodon (*Paspalum serobiculatum* L);

(ix) kutki (*Panicum miliare* L)."

(x) barley (*Hordeum vulgare* L)."

It may also be noted here that irrespective of the abovesaid cereals enumerated u/s 14 of the CST Act, section 6 of the APGST Act restricts the scope of the exigibility to the sales tax in two respects, viz. :

(1) that the dealer is liable to tax only at the point of sale or purchase as specified in Schedule III therein; and

(ii) that the rate of tax should be as specified in that Schedule which read with section 15 of the CST Act should not exceed 4 per cent of the sale or purchase price thereof.

However, the notification in question did not specify the "cereals and pulses" in respect of which exemption is granted. The said notification reads as follows :

"G.O. Ms. No. 2526, Revenue (S), dated 11th June, 1980 (vide p. 680 of Part I of A. P. Gazette dated July 10, 1980).

In exercise of the powers conferred by sub-section (1) of section 9 of the Andhra Pradesh General Sales Tax Act, 1957 (Andhra Pradesh Act VI of 1957), the Governor of Andhra Pradesh hereby exempts from the tax payable under the said Act, the purchase or sales of goods, as the case may be, made by the categories of industrial units, financed by the Andhra Pradesh Khadi and Village Industries Board or the Khadi and Village Industries Commission mentioned in the annexure, in connection with their industrial activities :

Provided that the said individual industrial units which make purchases or sales shall be allowed the exemption only if such units are covered by certificate issued by the Andhra Pradesh Khadi and Village Industries Board or the Khadi and Village Industries Commission, to the effect that they are financed by the said Board or the Commission.

ANNEXURE

Sl. No. Name of the industry

1. Processing of cereals and pulses
2. Village leather
3. Cottage match
4. Gur and khandasari
5. Palm gur
6. Non-edible oil and soap (soap) (Seed Collection)
7. Hand-made paper
8. Bee-keeping

9. Village pottery
10. Fibre
11. Carpentry and blacksmithy
12. Lime manufacturing
13. Forest plants and fruits for medicinal purposes
14. Gums
15. Fruit processing and preservation
16. Cane and bamboo."

6. The exemption is notified for processing of cereals and pulses by the categories of industrial units referred to therein. The question then arises what is meant by the expression "cereals" on the said notification. Obviously the notification meant "cereal" as specified in entry 20 of the Third Schedule to the APGST Act. We may note here that though the Third Schedule contains all the ten items specified as cereals in section 14 of the CST Act, yet they are not taxed at the same rate in Third Schedule to the APGST Act. Therefore, it cannot be said that all the items of cereals specified in the Third Schedule to the APGST Act or section 14 of the CST Act should be treated alike by granting exemption and that they should be brought within the meaning of cereals for purposes of the notification. The State Legislature treated various categories of cereals differently for purposes of rate of tax and the State Government has extended the benefit of exemption only in respect of such of them which have been included within the meaning of "cereals" in entry 20 of the Third Schedule to the APGST Act. It is brought to our notice that a Division Bench of this Court has taken the same view in Writ Petition No. 19826 of 1996 dated July 17, 1997 (Gunturu in [1998] 110 STC 172 supra. In this view of the matter, we do not find any illegality in orders under appeal.

7. The special appeals are, therefore, dismissed with costs.

8. Appeals dismissed.