State of Andhra Pradesh Vs Sri Sarvaraya Sugars Limited

Court: Andhra Pradesh High Court

Date of Decision: July 9, 2013

Citation: (2013) 57 APSTJ 11

Hon'ble Judges: Kalyan Jyoti Sengupta, C.J; G. Rohini, J

Bench: Division Bench

Advocate: P. Balaji Verma, Government Pleader for Commercial Taxes, for the Appellant; S. Dwarakanath, for the Respondent

Judgement

Kalyan Jyoti Sengupta, C.J.
We are of the view that these matters do not call for any interference as the learned Tribunal has found as

follows:

A reading of the above decision indicates that proposal not disclosed in the show-cause notice by the authorities cannot be made basis in the

order. In addition to it no where the Advance Ruling Authority stated that Ethanol is liable to be taxed at 12.5%/14.5%. As earlier said the product

Ethanol dealt by the appellant is nothing but rectified spirit and is liable to be taxed at 4% only which will fall under Entry 93 of Fourth Schedule

and it will not fall under Fifth Schedule. Hence, we hold that the orders passed by the revisional authority are unsustainable under law. The issue is,

therefore, found in favour of the appellant and against the revenue.

In view of the aforesaid finding of the Tribunal, we do not find any reason to interfere with the impugned judgment and order. Accordingly, we

dismiss these revisions.

APPENDIX: The Judgment of the Sales tax Appellate Tribunal, Visakhapatnam reads as under:

[In the Sales Tax Appellate Tribunal: Andhra Pradesh:

Visakhapatnam Bench: Visakhapatnam]

SRI SARYARAYA SUGARS LIMITED, CHELLURU

v.

THE STATE OF ANDHRA PRADESH

T.A. Nos. 157, 158 and 159 of 2012 Dt. 20.04.2012

J. Shyam Sundar Rao, Chairman & U. Yedukondalu, Deptl., Member

For the Appellant: S. Dwarakanath, Advocate

For the Respondent: N. Srinivasa Rao, State Representative

COMMON ORDER

(J. Shyam Sundar Rao, Chairman)

The above 3 appeals were filed by the appellant M/s. Sri Sarvaraya Sugars Limited, Chelluru, a registered dealer on the rolls of the Assistant

Commissioner (CT)(LTU), Kakinada (''The AC for short). The AC passed final assessment orders for different VAT periods under the provisions

of APVAT Act. The Deputy Commissioner (CT), Kakinada Division (The DC'' for short), having, observed that the orders passed by the AC are

prejudicial to the interests of revenue, by involving his powers u/s 32(2) of APVAT Act, issued, pre-revision show-cause notice calling for the

objections of the appellant, proposing to revise the order passed by the AC. The appellant filed its objections. However, the objections were

rejected and the proposal was confirmed. The details of the appeals are as follows:--

2. In the appeals grounds, in brief, it had been contended as follows:

The orders of the DC are illegal and contrary to law. The DC erred in subjecting the disputed turnover to tax at 12.5%/14.5%. The disputed

turnover represents sales turnover of ''Ethanol''. The basis for issuing show-cause notice according to the DC is that in respect of the sales of

Ethanol to the oil companies the appellant paid tax at 12.5% under Fifth Schedule, but in respect of others paid tax at 4%. Hence, two distinct

rates of tax on the same product cannot be applied. Excepting this, there was no other reason to propose higher rate of tax. The DC failed to

appreciate the detailed objections filed by the appellant. The product sold by the appellant falls under Entry 93 of the Fourth Schedule which

describes ''extra neutral alcohol'' and rectified spirit with effect from 18.08.2005. Sub-clause (k) of Rule 2 of the Andhra Pradesh Rectified Spirit

Rules, 1971 defines ''Rectified Spirit'' mean - liquor containing un-denatured alcohol of strength of not less than 50% over-proof and includes

absolute alcohol in other forms but does not include arrack. Alternatively, denatured ethanol alcohol of any strength is also liable to tax at 4% only

with effect from 01.05.2006 under Entry 100(6) of the fourth Schedule. Ethanol sold by the appellant contains ethyl alcohol. The payment of tax at

12.5% in respect of sales of ethanol to oil companies does not come in the way of appellant claiming the benefit of tax at 4%. The collection and

payment at 12.5% is by virtue of an agreement between the appellant and oil companies as evident from the purchase orders issued by the oil

companies. Merely because the buyer agreed to bear the liability at 12.5% with facility to claim input tax credit, it does not mean that the same rate

should be adopted for sales effected by the appellant. Even otherwise, the Oil Companies have later agreed to pay VAT at 4% only. What the

appellant manufactures is the Rectified Spirit (ethyl alcohol) and the technically names used in industrial parlance is ENA, Ethanol, Head-spirit,

absolute alcohol etc. They are based on degree of difference in the purity of the rectified spirit. The DC issued show-cause notice on different

grounds and erred in confirming the revision solely based on the decision given by Advance Ruling Authority in the case of KCP Sugar and

Industries Corporation Limited. The decision of the Advance Ruling Authority was not at all quoted in the show-cause notice. The appellant relies

upon the case of State of Andhra Pradesh Vs. Loharu Steel Industries Limited, .

3. At the time of hearing of the appeals, it has been contended by the learned appellant''s counsel that Ethanol sold by the appellant is nothing but

rectified spirit falling under Entry 93 of Fourth schedule exigible to tax at 4%.

On the other hand the learned SR supported the orders passed by the DC.

4. In view of the contentions raised, now the point that arises for consideration is:

Whether the product dealt by the appellant would fall under Entry 93 of Fourth Schedule or under Fifth Schedule?

5. POINT:--

(a) A reading of the order passed by the DC indicates that basing upon the decision given by the Advance Ruling Authority the revisional authority

observes that the appellant is liable to pay tax at 12.5%. A reading of the clarification given by Advance Ruling Authority in the case of K.C.P.

Sugars in A.R. Com45/2007 dated 06.102007 did not indicate that ethanol is liable to be taxed at 12.5%/14.5%. The relevant portion of the

order reads as hereunder:--

Denatured Ethyl Alcohol of any strength covered with HSN Code 2207.20 is liable to tax @ 4% with effect from 01.05.2006. The main 4 digit

heading 2207 described ''Undenatured Ethyl Alcohol of any Alcoholic strength by volume of 80% of EOL or higher; Ethyl Alcohol and other

Spirits denatured Ethyl Alcohol in strength. So sub-heading 2207.20.00 specifically enumerated ''Ethyl Alcohol and other Spirits Denatured of any

strength.'' Since this 8 digit code is fully tallied with the enumeration of entry 100 of the IV Schedule of APVAT Act, 2005, it is hereby clarified

that if ''Ethyl Alcohol is covered by HSN 2207.20.00, it is liable to tax @ 4%. Hence, Ethyl Alcohol falling under a specific 8 digit code

2207.20.00, is alone exigible to tax @ 4%.

(b) Relying on the above clarification the revisional authority is of the opinion that Ethanol dealt by the appellant is liable to be taxed at

12.5%/14.5%. But the Advance Ruling Authority does not state that Ethanol is liable to be taxed at 12.5%/14.5%. On the other hand the order of

the Advance Ruling Authority reads that ethyl alcohol is also known as rectified spirit and it answers the description of Entry 93. Hence, as per the

order of the Advance Ruling Authority ethyl alcohol and rectified spirit are one and the same. The certificates filed by the appellant issued by the

Excise Department i.e., Government Chemical Examiner of Prohibition Excise, Regional Prohibition & Excise Department, Kakinada shows that

the sample analyzed by the laboratory is rectified spirit. The appellant sent Ethanol sample for analyses. Another test report issued by Government

Chemical Examiner shows that the sample liquid received with seals contains rectified spirit and it tests reveal the sample contend denatured

alcohol. The appellant also filed a report of Programme Director, Petroleum Courses, University College of Engineering Kakinada, Jawaharlal

Nehru Technological University, Kakinada. It certified the chemical composition of rectified spirit and ethanol and the said report is as follows:--

1. Rectified spirit means ethanol (ethyl alcohol) containing 94.68% by volume of ethanol and rest of the percent is water. It should be having an

over proof of 66. The ethanol in the rectified spirit has the formula, C2H50H and structure as given in 2.

2. Anhydrous alcohol or Absolute alcohol: Pure ethanol (ethyl alcohol) containing no more than 1% water by weight. This is known as absolute

anhydrous alcohol.

(c) A reading of the above opinion expressed by the Programme Director, Petroleum Courses, University College of Engineering Kakinada,

Jawaharlal Nehru Technological University, Kakinada, coupled with the laboratory analysis reports of Government Chemical Examiner show that

the samples of Ethanol dealt by the appellant were analyzed and found that it is nothing but rectified spirit containing ethyl alcohol or absolute

alcohol. Hence, the product by the appellant is nothing but rectified spirit for which the different nomenclatures had been given as ethyl, ENA. In

industrial parlance, rectified spirit will be known as Ethanol. Hence, even if different nomenclatures are given for the product the main

ingredients/characteristics of the product will not get changed. Apart from it the invoices filed by the appellant indicate that what was sold by the

appellant is Ethanol denatured. Though initially the appellant charged 12.5% tax for HPCL and other oil companies, subsequently it charged 4%

only. In fact, though it collected 12.5% tax it was remitted to the Government. Basing on the aspect of higher rate of tax at 12.5% changed on oil

companies, the DC was of the opinion that the appellant has to pay tax 12.5% also. Though it was charged at 4% on others, charging of tax at

12.5% on oil companies is the result the outcome of the agreement entered by the appellant with oil companies. Though initially it collected tax at

12.5% from the oil companies for sale of Ethanol the same was remitted to the Government and subsequently the oil companies agreed to pay tax

at 4%, only and also claimed refund of the excess tax paid by them. Therefore, the product dealt by the appellant is nothing but rectified spirit

falling under Entry 93 of Fourth Schedule. Apart from it Entry 100 clause (6) of Fourth Schedule which deals with Industrial Input Tax Credit also

indicates that the denatured ethyl alcohol is liable to be taxed at 4% Ethanol contains denatured alcohol having the strength of 50% Entry 100(6) of

Fourth Schedule states that denatured ethyl alcohol of any strength is liable to be taxed at 4% only. Therefore, the Ethanol which is nothing but

rectified spirit dealt by the appellant is exigible to tax at 4% only. Merely because initially the appellant charged tax at 12.5% it does not change the

entry of the product, for the DC to treat the same as general goods falling under Fifth Schedule. Apart from it reliance placed by the DC on the

clarification issued by Advance Ruling Authority was not put to the notice of the appellant in the show-cause issued by him. The Hon''ble High

Court of A.P. in State of Andhra Pradesh Vs. Loharu Steel Industries Limited, observed as follows:--

So far as the second contention is concerned, the disputed turnover was sought to be taxed by the Deputy Commissioner on the ground that the

raw material from which steel re-rollers were manufactured, had not suffered tax. Though this is a condition precedent for application of G.O.Ms.

No. 88, dated January 28, 1977, yet that is not the ground mentioned in the show-cause notice for purposes of revising the assessment. It needs

no emphasis to observe that the exercise of power u/s 20 of the said Act by the revisional authority could only be on the grounds mentioned in the

show-cause notice, otherwise, the very purpose of affording the reasonable opportunity by giving a show-cause notice would become a farce

formality.

(d) A reading of the above decision indicates that proposal not disclosed in the show-cause notice by the authorities cannot be made basis in the

order. In addition to it no where the Advance Ruling Authority stated that Ethanol is liable to be taxed at 12.5%/14.5%- As earlier said the

product Ethanol dealt by the appellant is nothing but rectified spirit and is liable to be taxed at 4% only which will fall under Entry 93 of Fourth

Schedule and it will not fall under Fifth Schedule. Hence, we hold that the orders passed by the revisional authority are unsustainable under law.

The issue is, therefore, found in favour of the appellant and against the revenue.

(a) T.A. No. 157/2012:- In the result, the appeal is allowed.

(b) T.A. No. 158/2012:- In the result, the appeal is allowed.

(c) T.A. No. 159/2012:- In the result, the appeal is allowed.

Dictated to the Stenographer, transcribed by her and pronounced on this the 20th day of April, 2012.