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**(2005) 09 AP CK 0019**

**Andhra Pradesh High Court**

**Case No:** Tax Revision Case No. 53 of 2005

State of Andhra Pradesh

APPELLANT

Vs

Arihant Enterprises

RESPONDENT

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**Date of Decision:** Sept. 6, 2005

**Acts Referred:**

- Andhra Pradesh General Sales Tax Act, 1957 - Section 2, 28A

**Citation:** (2008) 11 VST 341

**Hon'ble Judges:** S. Ananda Reddy, J; B. Sudershan Reddy, J

**Bench:** Division Bench

**Advocate:** A.V. Krishna Kaundinya, for the Appellant; P. Srinivasa Reddy, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

S. Ananda Reddy, J.

The State of Andhra Pradesh preferred this revision aggrieved by the order of the Sales Tax Appellate Tribunal (hereinafter referred to as "the Tribunal") in T.A. No. 1027 of 2004, dated January 31, 2005 under which the order of competent authority, as confirmed by the first appellate authority of the acquisition proceedings u/s 28A of the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter referred to as "the Act") was set aside.

2. The respondent--M/s. Arihant Enterprises is a registered dealer on the rolls of the Commercial Tax Officer, M.J. Market Circle, Abids Division, Hyderabad. The respondent was carrying on business in plywood and decorative laminates. During the assessment year 2003-04, the jurisdictional Commercial Tax Officer noticed that the turnovers, reported by the respondent-dealer in its returns, are too low and are not matching with the huge quantities of goods the dealer was purchasing and selling, therefore, it was suspected that the dealer was suppressing the values of its purchases and sales by under-invoicing and the values recorded by the dealer in the

purchase/sales invoices and books of account are far less than fair market value of the goods. Therefore, the Commercial Tax Officer stated to have gathered certain information, and thereafter, inspected the premises of the respondent-dealer and the purchase value of the stock, as per the purchase invoices available with the dealer as well as the sale invoices of similar goods and the entries in the books of account, and he felt that there was variation of more than 100 per cent less than the fair market value compared with the sale price recorded in the sale invoices, while the variation was noted at 200 per cent in respect of the fair market value and the purchase prices, and therefore, initiated acquisition proceedings as contemplated u/s 28A of the Act. A show cause notice was issued, for which the respondent-dealer submitted its explanation and also sought for certain information with reference to the prices specified in the notice. The Commercial Tax Officer without supplying the price details as sought for by the respondent-dealer, proceeded with the matter and finally passed the order of acquisition, determining the compensation payable for the entire stocks available with the respondent-dealer at Rs. 44,00,254 as against the fair market value, estimated by the assessing officer at Rs. 58,37,873 which figure was arrived at by increasing the sale value by 25 per cent.

3. The petitioner was unsuccessful before the first appellate authority, therefore, carried the matter in appeal to the Tribunal. Before the Tribunal, there was difference of opinion between the Chairman of the Tribunal and the Departmental Member, and the matter was referred to the third Member who agreed with the view of the Chairman, and accordingly, as per the majority view, the appeal was allowed setting aside the acquisition proceedings. Aggrieved by the same, the State has come up with the present revision.

4. At the time of hearing, the learned Special Standing Counsel contended that the Tribunal failed to appreciate the contentions advanced on behalf of the State. It was contended that the assessing officer and the competent authority to initiate proceedings u/s 28A of the Act, had gathered information and brought on record sufficient material to come to the conclusion that he has reason to believe that the invoice value of the purchase/sales was less by more than 20 per cent of fair market value. In fact, the assessing officer notices that there was a variation of 100 per cent with reference to the sale prices while the variation with reference to the purchase invoice was more than 200 per cent. Therefore, there was no justification for the Tribunal in setting aside the acquisition proceedings, and hence, sought to set aside the order of the Tribunal.

5. The learned Counsel appearing for the respondent-dealer, however, sought to contend that the assessing officer-cum-competent authority, u/s 28A of the Act, has no jurisdiction to initiate the proceedings u/s 28A of the Act as he did not comply with the requirements of the said provision. It was contended by the learned Counsel that with reference to the stock where acquisition proceedings were initiated was, in fact, not sold by the date of acquisition proceedings, and as a

matter of fact, it was not the case of the assessing officer that the acquisition proceedings were initiated basing on undervaluation shown in the invoice of purchases as no such material was ever referred to at any stage of the proceedings and there was no sale of the stock which was acquired u/s 28A of the Act. The learned Counsel also contended that there are innumerable varieties in plywoods as well as in decorative veneers. It is also the case of the dealer that the price of such goods varies from the product of each company, which manufactures. In fact, the department did not have the price either with reference to the goods of the respondent-dealer nor the authority had acquired information as to the prices of the respective varieties of goods. When the authority failed to ascertain the sale value of similar goods by any other dealer in the market, it is impossible for the authority to come to the conclusion that there is either undervaluation or over valuation of any of the goods purchased/sold. The learned Counsel also contended that the department had estimated the value of the stock at the premises of the respondent-dealer at Rs. 2,87,32,683.90, but the very same Commercial Tax Officer filed quotations stated to have been given by two dealers, who inspected the stock of the respondent, at Rs. 71.82 lakhs and Rs. 73.03 lakhs as per the quotations dated September 7, 2004 and October 5, 2004 respectively. As against all this, it was stated that the respondent-dealer had agreed to part with the entire stock if the dealer was paid an amount of Rs. 53,22,847, for which the department was not ready, which clearly shows that the figures or even the alleged quotations are false and fictitious and the claim made by the department is not based on any valid material. The learned Counsel also contended that the very department filed an application before the Tribunal seeking appointment of an advocate as well as an expert to inspect the goods with reference to which acquisition orders have already been passed for the purpose of noting down the varieties of the stock that is available with the respondent, which goes to show that the acquisition proceedings were made without conducting the necessary inspection. Therefore, the learned Counsel contended that the Tribunal had taken into account all these omissions, and therefore, set aside the acquisition proceedings on the ground that the department failed to satisfy the requirements of the provisions u/s 28A of the Act to initiate and acquire the goods of the respondent-dealer. Hence, the learned Counsel sought to sustain the order.

6. Heard both sides and considered the material on record.

When the matter was taken up for admission, both parties represented that the revision may be disposed of at the admission stage itself.

The issue that falls for consideration in this revision is whether there are any grounds warranting interference with the order of the Tribunal.

7. The Commercial Tax Officer purported to be exercising the powers u/s 28A of the Act, initiated acquisition proceedings on the ground that the respondent-dealer was indulging in under-invoicing of the purchases as well as sales which had facilitated

the evasion or reduction of the tax payable by the respondent-dealer. According to the authority, it had received credible information that the respondent-dealer was indulging in under invoicing, therefore, gathered certain information including the quotations with reference to the plywood as well as decorative veneers in which the respondent-dealer was dealing. Thereafter, the premises of the respondent was inspected, and on inspection, the competent authority had concluded that the dealer was indulging in under invoicing of both purchases and sales which had resulted in variation of more than 100 per cent less between the fair market value of the sale prices recorded in the sale invoices and the variation is more than 200 per cent between the market value and the purchase price. In the show-cause notice, the competent authority has referred to certain of quotations as to the sale price of the goods in the market and the same was compared with the sale bills of the petitioner and felt that there was under invoice. Thereafter, the assessing officer referred to the purchase value and the sale value basing on the earlier bills and then estimated the fair market value by making an addition of 25 per cent for which there was no basis, and on that assumption that there was undervaluation of sale invoices, the competent authority passed the acquisition proceedings. The respondent-dealer was unsuccessful before the first appellate authority, and then carried the matter in the second appeal before the appellate Tribunal.

8. The appellate Tribunal after considering the alleged material, which the competent authority had collected and compared with the sale bills of the respondent and also estimated values, and the quotations, and the offer of the respondent-dealer for the sale of the entire stock at Rs. 53,22,847.06 as against the departmental estimated fair market price at Rs. 2,87,32,683.90 and the quotations from two dealers received by the department for Rs. 71.82 lakhs and Rs. 73.03 lakhs, but the department failed to accept the said offer on the premise that the dealer was not prepared to give a detailed break up of purchase value of the stock, and came to the conclusion that the competent authority, in fact, did not conduct proper inspection of the goods that were available with the dealer. The Tribunal, therefore, recorded a finding as to the failure of the authority to ascertain fair market price, which reads:

We are of the considered view that the learned Commercial Tax Officer failed to ascertain the fair market price as defined in Section 2(gg) of the APGST Act and instead he adopted wrong methods for ascertaining the fair market price and adopted a different fair market price at different stages.

9. Therefore, the Tribunal set aside the acquisition proceedings, but, however, in order to protect the interests of the department, directed the respondent-dealer to pay advance sales tax on estimated turnover of the goods at Rs. 60 lakhs.

10. Though the Departmental Member differed with the Chairman, but the third Member, to whom the matter was referred, agreed with the view of the Chairman, and in fact, the third member in categorical terms, recorded his findings that there

were no circumstances for the competent authority to initiate proceedings u/s 28A of the Act. Therefore, from the majority view of the Tribunal, it is clear that categorical findings have been recorded and that the material does not show that the case would attract the provision of Section 28A of the Act. The said factual findings recorded does not call for any interference by this Court exercising the revisional jurisdiction.

11. Under the above circumstances, the tax revision case fails, and the same is, accordingly, dismissed. No order as to costs.