

(2001) 10 AP CK 0029

Andhra Pradesh High Court

Case No: Tax Revision Case No"s. 246 and 251 of 2001

Vidyavanam Public Trust

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision: Oct. 15, 2001

Acts Referred:

- Andhra Pradesh General Sales Tax Act, 1957 - Section 9

Citation: (2002) 125 STC 397

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

Bench: Division Bench

Advocate: S. Krishna Murthy, for the Appellant; The Special Government Pleader for Taxes, for the Respondent

Final Decision: Partly Allowed

Judgement

S.R. Nayak, J.

Admitted. Learned Special Government Pleader for Taxes takes notice on behalf of the respondents. These T.R.Cs. were finally heard with the consent of the learned counsel for the petitioner and the learned Special Government Pleader for Taxes and they are being disposed of by this common order.

2. T.R.C. No. 246 of 2001 relates to the assessment year 1994-95 and T.R.C. No. 251 of 2001 relates to the assessment year 1992-93.

3. The petitioner is a registered dealer on the rolls of the Commercial Tax Officer, Vuyyuru. The petitioner during the relevant assessment years 1994-95 and 1992-93 purchased cereals and pulses along with other goods and converted them into poultry feed and sold them. It is also the case of the petitioner-dealer that it was doing business in leather bags, etc. For the assessment years 1994-95 and 1992-93, the Commercial Tax Officer, Vuyyuru, completed the assessment of the petitioner.

4. Before the Commercial Tax Officer, the petitioner-dealer contended that the business in poultry feed carried on by it falls under the category "processing of cereals and pulses" as contemplated in G.O. Ms. No. 2566, Revenue, dated June 11, 1980, and therefore, no sales tax could be levied. The claim of the petitioner was rejected by the Commercial Tax Officer. Against the said rejection, the petitioner preferred appeals before the Appellate Deputy Commissioner, Vijayawada and the Appellate Deputy Commissioner also dismissed the appeals. Aggrieved by the said orders, the petitioner preferred further appeal to the Sales Tax Appellate Tribunal (for short "the Tribunal").

5. Before the Tribunal it was contended that by virtue of G.O. Ms. No. 2566, Revenue, dated June 11, 1980 which relates to exemption of specified classes of persons and specified classes of goods, and since the petitioner was financed by the Andhra Pradesh Khadi and Village Industries Commission, the goods in which the petitioner was dealing, viz., the poultry feed, and the leather goods should be exempted from the tax liability. In support of that claim the petitioner filed a certificate bearing No. AP/SO/PCPI/91/95-96 dated December 28, 1995 issued by the Director, Khadi and Village Industries Commission, Gandhi Bhavan, Hyderabad. It was also contended before the learned Tribunal that the petitioner during the relevant assessment years sold leather chappals and those goods form part of the "village leather" within the meaning of item No. 2 of G.O. Ms. No. 2566, Revenue, dated June 11, 1980. Further, the levy of turnover tax by the assessing authority on the second sales of de-oiled bran, de-oiled cake, feed supplement, minerals, poultry vitamins, stone grit and shell grit, etc., was disputed on the ground that such a levy could not be imposed in terms of G.O. Ms. No. 859, dated September 3, 1993 read with G.O. Ms. No. 2566, Revenue dated June 11, 1990.

6. Although the above three points were specifically urged by the petitioner-dealer, before the learned Tribunal, as could be seen from the statement made by the Tribunal itself, the Tribunal did not consider the last two points and restricted its consideration only to the first point, and ultimately held that the poultry feed is not covered by G.O. Ms. No. 2566 Revenue dated June 11, 1980, inasmuch as that goods cannot be brought under the head "Processing of cereals and pulses" vide item No. 1 in the annexure.

7. Sri S. Krishna Murthy, learned counsel for the petitioner, would strenuously contend that the learned Tribunal has seriously erred in law in not considering the last two points noticed above at all and therefore, it is a fit case where the Tribunal should be directed to consider the last two contentions of the petitioner on merits. Adverting to the first contention, the learned counsel would maintain that the opinion of the Tribunal cannot be sustained because, in forming that opinion, the learned Tribunal has lost sight of the two important pieces of relevant evidence ; the Khadi and Village Industries Commission has granted finance to the petitioner under the scheme evolved by it relating to "Processing of cereals and pulses" ; since

Khadi and Village Industries Department has granted loan to the petitioner under the head "Processing of cereals and pulses" the poultry feed in which the petitioner was the dealer during the relevant period should be brought under item No. 1 of G.O. Ms. No. 2566, Revenue, dated June 11, 1980. The learned counsel would maintain that the poultry feed manufactured and sold by the petitioner-dealer is an item which falls within the head : "Processing of cereals and pulses" incorporated vide item No. 1 in G.O. Ms. No. 2566, Revenue, dated June 11, 1980 and this is what the Director of Khadi and Village Industries Commission, has also opined and certified in his letter dated December 28, 1995.

8. The learned Special Government Pleader for Taxes after perusing the impugned order of the Tribunal would fairly tell us that there is no consideration of the last two contentions of the petitioner in the impugned order by the Tribunal. However, dealing with the first contention, the learned Special Government Pleader for Taxes would support the finding recorded by the learned Tribunal.

9. The learned Tribunal having noticed three contentions raised by the petitioner-appellant before it, has not considered the last two contentions, viz., that the petitioner is doing business in leather bags and with regard the objection of the petitioner in levying turnover tax by the assessing authority on the second sales of de-oiled bran, de-oiled cake, feed supplement, minerals, poultry vitamins, stone grit and shell grit, etc., in any part of the impugned order. In that view of the matter it becomes imperative to direct the Tribunal to consider those two contentions on merits after giving reasonable opportunity to the petitioner to put forth its case.

10. This takes us to the third contention of the petitioner-dealer placed before the Tribunal, which is reiterated before us also. We do not find any merit in the third contention of the petitioner-dealer. At the threshold, should it be noticed that the court is called upon to interpret the Government order issued by virtue of its power u/s 9 of the APGST Act, 1957. Notification issued u/s 9 of the APGST Act reads as under :

"In exercise of the powers conferred by Sub-section (1) of Section 9 of the APGST 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 and 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 Villages Industries Board to the effect that they are financed by "(the Board or the Commission)"."

11. A careful reading of G.O. Ms. No. 2566, Revenue, dated June 11, 1980 makes it very clear that a dealer in order to claim exemption should satisfy two conditions ; the first condition being that the dealer should be a unit which is covered by a certificate issued by the Andhra Pradesh Khadi and Village Industries Board to the effect that the Board has financed the unit and the second condition is that the activity carried on by such unit should be one of the industrial activities mentioned in the annexure to the Government order.

12. The argument of Sri S. Krishnamurthy, learned counsel for the petitioner that since the A.P. Khadi and Village Industries Commission has financed the petitioner-unit to carry on the industrial activity of manufacture of poultry feed under the scheme to finance the "processing of cereals and pulses", the poultry feed manufactured by the petitioner through the above industrial activity should also be treated as an item of goods falling in item No. 1 of G.O. Ms. No. 2566 dated June 11, 1980 is not acceptable to us. Suffice it to state that the two documents to which our attention is drawn by Sri. S. Krishnamurthy are not the documents issued by the State Government by way of clarification. The certificate issued by the Director, Andhra Pradesh Khadi and Village Industries Commission, in our considered opinion cannot be a relevant material or guide in interpreting or understanding the statutory order issued by the Government u/s 9 of the APGST Act. In other words, the opinion of the Director, Andhra Pradesh Khadi and Village Industries Commission, would not be a relevant material in answering the question whether the poultry feed manufactured and dealt with by the petitioner-dealer would come within item No. 1, "processing of cereals and pulses". The words "processing of cereals and pulses" have to be understood in the way that phrase is understood in commercial or ordinary parlance. Poultry feed is undoubtedly, a distinct goods from the goods cereals and pulses. Therefore, no exception can be taken to the opinion formed by the Tribunal. We do not find any other substantive ground to interfere with the opinion of the learned Tribunal as regard the rejection of the petitioner's claim that poultry feed manufactured by it is covered by item No. 1 of G.O. Ms. No. 2566, Revenue, dated June 11, 1980.

In the result and for the foregoing reasons, we allow these tax revision cases in part and remand the proceedings to the learned Tribunal with a direction to consider the first two questions (points) referred to above in accordance with law. No costs.