

(2001) 09 AP CK 0042

Andhra Pradesh High Court

Case No: Writ Petition No. 27356 of 1995

Jitender Roller Flour Mills

APPELLANT

Vs

Commercial Tax Officer and
Others

RESPONDENT

Date of Decision: Sept. 25, 2001

Acts Referred:

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

Citation: (2002) 125 STC 383

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

Bench: Division Bench

Advocate: S. Krishna Murthy, for the Appellant; Special Government Pleader, for Respondents 1 and 2, S.R. Ashok, for Respondents 3 and 4, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S.R. Nayak, J.

The short question that arises for consideration and decision is whether the Commercial Tax Department is justified in demanding tax for the period April 1, 1995 to May 22, 1995 in terms of the enhanced rate of tax in G.O. Ms. No. 252, dated May 19, 1995, published in the Andhra Pradesh Official Gazette on May 23, 1995.

2. The above question arises in the following factual background :

The petitioner is a roller flour mill, manufacturing wheat products, having its factory at Hyderabad and it is a registered dealer both under the Andhra Pradesh General Sales Tax Act (hereinafter referred to as "the Act") and Central Sales Tax Act, on the rolls of the Commercial Tax Officer, Mehadipatnam Circle, Hyderabad, first respondent herein. The petitioner purchased wheat from Food Corporation of India from within the State as well as from outside the State. During the month of April

1995, the petitioner purchased 8,500 kgs. of wheat, amounting to Rs. 40,27,267.65 paise from the respondents 3 and 4.

3. Wheat is a declared goods falling under item 16 of the Third Schedule to the Act, exigible to tax at 4 per cent originally. However, the rate of tax on wheat was reduced to 1 per cent by G.O. Ms. No. 130, Revenue, dated February 14, 1989 with effect from February 15, 1989. In pursuance of the said reduction in the rate of tax from February 15, 1989 onwards, wheat was subjectable to tax at 1 per cent in addition to the levy of additional tax and surcharge and the net effective rate chargeable from the dealer was arrived at 3.1 per cent. However, consequent on the changes brought out into the Act by Amendment Act 22 of 1995, the levy of additional tax u/s 5A and surcharge u/s 6B were omitted from the statute. The resultant position was that wheat was subjectable to tax at the rate of 1 per cent only from April 1, 1995.

4. When the matter stood thus, the Government of Andhra Pradesh, second respondent herein issued G.O. Ms. No. 252, Revenue dated May 19, 1995, which was published in the Gazette on May 23, 1995 fixing the rate of tax on wheat at 3 per cent with effect from April 1, 1995. In terms of this Government Order, the tax was collected at the enhanced rate even for the period from April 1, 1995 to May 22, 1995. When the matter stood thus, the petitioner has presented this writ petition on December 4, 1995 praying for issue of writ of mandamus holding that the rate of tax on the sales of wheat within the State for the period from April 1, 1995 till the date of its publication in the Andhra Pradesh Gazette, i.e., May 23, 1995 is at 1 per cent only and further to direct the third and fourth respondents to refund the excess sales tax collected by them on the sales of wheat during the said period.

5. The action of the respondents 3 and 4 in collecting the tax at the enhanced rate of 3 per cent in terms of G.O. Ms. No. 252, even from the period from April 1, 1995 to May 22, 1995 is ex facie, illegal and without authority of law, in the light of the judgment of this Court in Yemmiganur Spinning Mills Limited v. State of Andhra Pradesh [1976] 37 STC 314. In that case the division Bench of this Court had handed down the opinion that Section 9 of the Act, which enables to grant exemption from tax by notification published in the Andhra Pradesh Gazette, does not enable the Government to rescind with retrospective effect an earlier notification granting exemption from tax and any such notification will come into force only from the date of its publication in the Gazette and not from any earlier date. The said ratio squarely applies to the facts of the case. Here is a case, where the effect of G.O. Ms. No. 252, dated May 19, 1995, which was published in the Gazette on May 23, 1995, has the effect of enhancing the tax rate on wheat from 1 per cent to 3 per cent. In other words, the said notification has the effect of rescinding the earlier beneficial concession granted to the traders by Act 22 of 1995.

6. At the time of hearing Sri S.R. Ashok, learned counsel appearing for the Food Corporation of India, told us that the tax collected at the enhanced rate for the

period from April 1, 1995 to May 22, 1995 was already transmitted to the Commercial Tax Department and this statement made by the learned counsel is not disputed by the learned Special Government Pleader for Taxes.

7. In the result and for the foregoing reasons, we declare that the collection of tax for the period from April 1, 1995 to May 22, 1995 at the enhanced rate on wheat in terms of G.O. Ms. No. 252, dated May 19, 1995 is illegal and unauthorised. Consequently, a direction shall issue to the respondents 1 and 2 to refund the excess tax collected from the petitioner or to adjust the same towards any existing liability, if any.

The writ petition is accordingly allowed. No costs.

That rule nisi has been made absolute as above.