

(2001) 02 AP CK 0012

Andhra Pradesh High Court

Case No: Special Appeal No. 23 of 1996

Anandi Roller Flour Mills Ltd.

APPELLANT

Vs

Commissioner of Commercial
Taxes

RESPONDENT

Date of Decision: Feb. 2, 2001

Acts Referred:

- Andhra Pradesh General Sales Tax Act, 1957 - Section 9, 9(1), 9(2)
- Central Sales Tax Act, 1956 - Section 8(2A)

Citation: (2001) 2 ALT 286 : (2001) 122 STC 597

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

Bench: Division Bench

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

Final Decision: Allowed

Judgement

S. Ananda Reddy, J.

This special appeal is directed against the order of the Commissioner of Commercial Taxes passed in exercise of revisional powers u/s 20 of the Andhra Pradesh General Sales Tax Act, 1957.

2. The assessee Anandi Roller Flour Mills, Hyderabad, was provisionally assessed by the Commercial Tax Officer for the period from May 1, 1991 to December 31, 1991 under the Central Sales Tax Act, on the gross and net turnover of Rs. 26,56,160 and levied tax at the rate of 2.5 per cent plus surcharge. The assessee-dealer carried the matter in appeal to the Appellate Deputy Commissioner, who allowed the appeal on the ground that wheat and wheat products are exempted by virtue of the notification issued in G.O. Ms. No. 377, Revenue Department, dated May 2, 1991, which exempts from the levy of tax payable on the sale or purchase of wheat and wheat products by the roller flour mills within the State for a period of five years

with effect from the date of publication of the notification. The Commissioner of Commercial Taxes, however, felt that the said order accepting the claim of the appellant for exemption is not in accordance with the law. Therefore, issued a show cause notice proposing to revise the said order of the Appellate Deputy Commissioner. After considering the explanation of the assessee/dealer, the Commissioner was of the opinion that the G.O. was issued under Sub-section (1) of Section 9 of the Andhra Pradesh General Sales Tax Act, 1957 (for short "the APGST Act") and not under Sub-section (5) of Section 8 of the Central Sales Tax Act, 1956 (for short "the CST Act"). Therefore, the exemption granted under the said G.O. applies only to the sale or purchase of wheat and wheat products by the roller flour mills within the State and it cannot be inferred that the said exemption equally applies to the inter-State transactions. Further, the revisional authority referring to the decision of the Supreme Court in the case of [Commissioner of Sales Tax, J and K and Others Vs. Pine Chemicals Ltd. and Others,](#) , decided against the assessee observing as under :

"From the above it is clear that in the absence of specific order by the Government granting exemption under the CST Act, the exemption granted u/s 9(1) of the APGST Act cannot overflow to cover inter-State sales."

The said order of the revisional authority is assailed in the present appeal.

3. The learned counsel for the appellant contended that the revisional authority was completely in error in observing that a specific notification under the provisions of the CST Act, is required for granting exemption in respect of the inter-State transactions. The learned counsel contended that u/s 8(2-A) of the CST Act, the transactions that are exempted under the APGST Act are automatically exempted under the CST Act. The revisional authority had totally ignored the provisions of Sub-Section (2-A) of Section 8 while revising the order of the Appellate Deputy Commissioner. In fact, according to the learned counsel there is no finding by the revisional authority that the exemption granted under G.O. Ms. No. 377 is not a general exemption, but is under specified conditions or circumstances in which case the said exemption may not be treated as a general exemption so as to deny the applicability of the provisions of Section 8(2-A). The learned counsel strongly relied upon the decision of the Supreme Court in the case of [Commissioner of Sales Tax, J and K and Others Vs. Pine Chemicals Ltd. and Others,](#) , and contended that the apex Court after considering the contents of the G.O. issued by the Jammu and Kashmir had opined that the said G.O. grants exemption only under specific conditions and circumstances and not as and by way of a general exemption. The learned counsel also relied upon a decision in the case of [Sri Venkateswara Hybrid Seeds Co. Vs. State of Andhra Pradesh,](#) and also a decision of this Court in the case of [State of Andhra Pradesh Vs. Toshiba Anand Batteries Ltd. and Another,](#) . The learned counsel also relied upon a decision in the case of [Vinod Solvent Extracts \(P\) Ltd. Vs. The State of Andhra Pradesh,](#) .

4. The learned Special Government Pleader for Commercial Taxes, on the other hand, supported the order of the revisional authority. It is contended by the learned Government Pleader that the exemption granted under G.O. Ms. No. 377 is conditional and to the identified dealers only and therefore it could not be considered as general exemption granted u/s 9(1) of the APGST Act. The learned counsel also referred to G.O. Ms. No. 1066, dated September 17, 1985 and also to G.O. Ms. No. 974 and contended that unless the exemption granted by the Government is in the nature of a general exemption the petitioner is not entitled to any relief. The learned counsel also contended that unless exemption is granted by issuing a notification under Sub-section (5) of Section 8 of the CST Act, the appellant/dealer is not entitled for exemption in respect of the inter-State transactions. As the notification under G.O. Ms. No. 377 was issued only u/s 9(1) of the APGST Act, the same would not entitle the dealer for exemption under the CST Act.

5. The dispute in this appeal depends upon the answer to the question whether G.O. Ms. No. 377, Revenue dated May 2, 1991 is intended to grant general exemption under the provisions of the APGST Act and therefore extends the benefit of exemption to the inter-State sales also in terms of Section 8(2-A) of the CST Act.

6. For convenience the operative part of the G.O., is extracted here, which is as under :

"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 No. Act VI of 1957), the Governor of Andhra Pradesh hereby exempts from the levy of tax payable under the said Act, on the sale or purchase of wheat and wheat products by the roller flour mills within the State for a period of five years with effect on and from the date of publication of this notification in the Andhra Pradesh Gazette."

A reading of the above shows that the State Government issued the above G.O., exercising the powers u/s 9(1) of the APGST Act, granting exemption on the sale or purchase of wheat and wheat products by the roller flour mills within the State for a period of five years, with effect on and from the date of publication of the said notification. It would be appropriate to consider the provisions of Section 9 of the APGST Act, which is as under :

9. Power of State Government to notify exemptions and reductions of tax (or interest).--(1) The State Government may, by notification in the Andhra Pradesh Gazette, make an exemption, or reduction in rate, in respect of any tax or interest payable under this Act--

(i) on the sale or purchase of any specified class of goods, at all points or at any specified point or points in series of sales or purchases by successive dealers ; or

(ii) by any specified class of persons, in regard to the whole or any part of their turnover.

(2) Any exemption from tax or interest or reduction in the rate of tax notified under Sub-section (1)--

(a) may extend to the whole of the State or to any specified area or areas therein ;

(b) may be subject to such restrictions and conditions as may be specified in the notification, including conditions as to licences and licence fees."

7. A perusal of the above sections shows that Clause (i) of Section 9(1) refers to the exemption on the sale or purchase of any specified class of goods at all points or at any specified point or points in a series of sales by successive dealers. Clause (ii) of Section 9(1) refers to any specified class of persons in regard to the whole or any part of their turnover. Sub-section (2) of Section 9 specifies that the exemption from tax or interest or reduction in the rate of tax notified under Sub-section (1), under Clause (a) may extend to the whole of the State or to any specified area or areas therein, and under Clause (b) that such exemption or reduction may be subject to such restrictions and conditions as may be specified in the notification.

From the above it is clear that Sub-section (1) of Section 9 provides for exemption in respect of tax payable by any specified class of persons ; whereas Sub-section (2) provides the specified restrictions or conditions for the grant of exemption or reduction in the rates of tax. As noticed earlier, the Government Orders issued in G.O. Ms. No. 377 intends to benefit specified class of persons, viz., roller flour mills, as provided u/s 9(1)(ii) of the Act. There is no reference to any specified restrictions or conditions, upon compliance of which the roller flour mills are entitled to the exemption. No doubt, the exemption is available for a period of five years from the date of publication of the said notification. Such exemption for a limited period cannot be construed as a restricted or conditional exemption.

8. From the above discussion it is clear that by the above referred notification, the State Government granted exemption to all the roller flour mills on the sale or purchase of wheat and wheat products within the State. The said exemption granted to a specified class of persons should be construed as a general exemption and not as a restricted or conditional. When once the exemption granted u/s 9(1) of the APGST Act is of general in nature then it has to be construed whether such a benefit would be available to the inter-State transactions. The appropriate provision in the CST Act is Section 8(2A), which is as under :

"Section 8 : Rate of tax on sales in the course of inter-State trade or commerce.--

(1).....

(2).....

(a).....

(b).....

(2-A) Notwithstanding anything contained in Sub-section (1A) of Section 6 or Sub-section (1) or Clause (b) of Sub-section (2) of this section, the tax payable under this Act by a dealer on his turnover in so far as the turnover or any part thereof relates to the sale of any goods, the sale or, as the case may be, the purchase of which is, under the sales tax law of the appropriate State, exempt from tax generally or subject to tax generally at a rate which is lower than four per cent whether called a tax or fee or by any other name, shall be nil, or as the case may be, shall be calculated at the lower rate.

Explanation.--For the purposes of this sub-section, a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State, if under that law the sale or purchase of such goods is exempt only in specified circumstances or under specified conditions or the tax is levied on the sale or purchase of such goods at specified stages or otherwise than with reference to the turnover of the goods."

9. A perusal of the above Sub-section (2-A) of Section 8 shows that the said section begins with non obstante clause, which shows that the said provision overrides any other provision contrary to it. As per the said sub-section, the tax payable under the CST Act by a dealer on his turnover or any part thereof relates to the sale of any goods, the sale or, as the case may be, the purchase of which is under the sales tax law of the appropriate State, exempt from tax generally or subject to tax generally at a rate which is lower than the rate which leviable under the CST Act, then the tax payable by the said dealer shall be nil, or as the case may be, shall be calculated at a lower rate. A perusal of the Explanation under the said subsection shows that it was explained what is meant by "exemption from tax generally" under the sales tax law of the appropriate State. It was explained negatively stating that a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State, if under that law, the sale or purchase of such goods is exempt only in specified circumstances or under specified conditions or the tax is levied on the sale or purchase of such goods at specified stages or otherwise than with reference to the turnover of the goods. From the above consideration of the Explanation, it is clear that the exemption shall not be considered as a general exemption, if the exemption is granted only in specified circumstances or under specified conditions. In fact, the term referred "exempt from tax generally" was not defined under the provisions of the APGST Act. However, by considering the provisions of Section 9 together with Sub-section (2-A) of Section 8 and the Explanation under it, goes to show that the specified conditions or restrictions are contemplated under Clause (b) of Section 9(2). If such conditions or restrictions are imposed in a particular order granting exemption, which are to be complied by a dealer in order to avail of the benefit of exemption, then such exemption shall not be deemed to be an exemption from tax generally. If we look into the terms of the

G.O. Ms. No. 377 issued by the Government, we do not find that there are any specific conditions or restrictions that are imposed by the Government in order to avail of the benefit of exemption by the dealers referred to in the said G.O. No doubt, the benefit of exemption was confined to a class of dealers or assesseees, as provided u/s 9(1)(ii), but not subject to any restrictions or conditions as contained in Sub-section (2) of Section 9 [more specifically under Sub-section (2)(b) of Section 9]. In the absence of any such conditions or restrictions, the exemption shall not be deemed to be not general exemption. At this stage, it would be appropriate to consider the decision of the apex Court in the case of Pine Chemicals Ltd. [1995] 96 STC 355. Almost an identical issue was considered by the apex Court with reference to the availability of the exemption under a Government Order issued by the State of Jammu and Kashmir. Under the said G.O., the Government accorded sanction for granting incentives and facilities to large and medium-scale industries in the State of Jammu and Kashmir. The incentives relate to the grant of exemption from the State sales tax, both on raw materials and finished products for a period of five years from the date the unit goes into production. By a subsequent Government Order, the State sales tax paid by large and medium scale industries on the raw materials procured by them for the initial five years of production would be refunded to such industries. Similarly, such industries will be granted exemption from the payment of any State sales tax on their finished products for a period of five years from the date the unit goes into production. For attracting the exemption provided by the State Government, it has to be established that the goods, the sale or purchase of which is claimed to be exempt from tax, are manufactured by a large or medium scale industry and that the said goods are manufactured and sold within five years from the date the said industrial unit has gone into production. The claim of the assesseees was rejected by the High Court. However, on appeal, the Supreme Court accepted the claim of the dealer, as per its decision reported in [Pine Chemicals Ltd. and Others Vs. Assessing Authority and Others](#), . But, however, on a review petition (Commissioner of Sales Tax, Jammu and Kashmir v. Pine Chemicals Ltd. [1995] 96 STC 355, filed by the department, the Supreme Court reviewed its earlier decision and held that the exemption that was granted is not a general exemption and therefore the dealer is not entitled to the benefit under Sub-section (2-A) of Section 8 of the CST Act. The relevant portion of the judgment of the Supreme Court is as under :

"The exemption under the Government Order No. 159 is not with reference to goods or a class or category of goods but with reference to the industrial unit producing them and their manufacture and sale within a particular period. For the purposes of the Government order, the nature, class or category of goods is irrelevant ; it may be any goods. It is concerned only with the industrial unit producing them and the period within which they are manufactured and sold. Can it be said in such a case that it is an instance where the sale is of goods, the sale or purchase of which is under sales tax law of the appropriate State, exempt from tax

generally ? Certainly not. Exemption provided by Government Order No. 159, to repeat, is not with reference to goods but with reference to the industrial unit. So long as it is (i) a large or medium scale industry and (ii) it manufactures and sells goods within the five years of its going into production, the sale of such goods is exempt irrespective of the nature or classification of goods. Similar goods may be manufactured by another unit but if it does not satisfy the above two requirements, the goods manufactured and sold by it would not be entitled to exemption from tax. Indeed, the goods manufactured by that very unit would not be eligible for exemption if they are manufactured after the expiry of five years from the date it goes into production and/or sells them beyond the said period. The period of exemption may also vary from unit to unit depending on the date of commencement of production in each unit. For the above reasons, we are of the opinion that the exemption granted under the aforesaid Government order does not satisfy the requirements of Section 8(2-A)."

The apex Court has also further considered the provisions of Section 8(2-A) also and held that "In our respectful opinion, however, Sub-section (2-A) speaks of sale or purchase of goods being exempt generally under the State sales tax enactment ; it does not speak of exemption qua the dealer, much less qua the unit manufacturing such goods. The exemption notification issued by the Jammu and Kashmir Government granted the exemption qua the industrial unit manufacturing the goods and the period within which they are manufactured and sold and not qua the goods."

10. From the above it is clear that by the Government Order of Jammu and Kashmir, which was considered by the apex Court, exemption was granted subject to the fulfilment of conditions. If we examine G.O. Ms. No. 377 in the light of the above decision, we do not find any conditions or restrictions to be fulfilled by the roller flour mills in order to get the benefit of exemption. As per the said G.O., all roller flour mills are entitled for exemption from the levy of tax on the sale or purchase of wheat and wheat products within the State for a period of five years from the date of the notification. No doubt, the said exemption is available only to a class of dealers, i.e., roller flour mills only. By that it cannot be inferred that the said exemption is not of general nature, but is restricted or conditional. As referred in the explanation under Sub-section (2-A) of Section 8 of the CST Act, which explains what shall not be deemed to be exempt from tax generally under the sales tax laws of the appropriate State, if under that law, the sale or purchase is exempt only in specified circumstances or under specified conditions. As held earlier, the exemption granted under the impugned G.O., i.e., G.O. Ms. No. 377, is not subject to any conditions or circumstances, but to all roller flour mills in the State. Therefore, it should be deemed that the exemption is of general in nature as referred to in the explanation to Section 8(2-A) of the CST Act.

11. The learned Government Pleader referred to certain other G.Os., in support of his contention that G.O. Ms. No. 377 does not grant general exemption but only to the identified dealers and hence it should be treated as granting conditional exemption. We are unable to appreciate the said contention. The reference to other G.Os. by the learned Government Pleader is not relevant as the issue in question is to be decided basing on the interpretation of the G.O. in question and not by referring to other Government Orders. The provisions of Section 9(1) are clear as to the reference to class or categories of dealers from the conditions or circumstances under which exemption is available. Clause (ii) of Section 9(1) provides for class or categories of dealers, whereas the conditions or circumstances are referred to under Clause (b) of Sub-section (2) of Section 9. Therefore, the grant of exemption to a class or categories of dealers cannot be equated to that of conditional or restricted. Hence, the contention of the learned Government Pleader is devoid of any merit.

12. From the above discussion it is clear that the Government issued G.O. Ms. No. 377, dated May 2, 1991, granting exemption to all roller flour mills in respect of the sale or purchase of wheat and wheat products within the State for a period of five years from the date of the notification. This exemption is to a class of dealers as provided under Clause (ii) of Section 9(1) and there is no reference to any conditions or circumstances as provided under Clause (b) of Section 9(2) under which exemption is available. Therefore, in the absence of any such conditions or circumstances, under which exemption is available, the exemption shall be construed as general. This view is also in conformity with the explanation to Section 8(2-A) of the CST Act.

13. The issue whether a separate notification under the CST Act is required to get exemption under the provisions of the CST Act was considered by this Court in the case of Sri Venkateswara Hybrid Seeds Co. [1997] 106 STC 34 and in Vinod Solvent Extracts (P) Ltd. [1989] 73 STC 175, and held that when once a notification u/s 9(1) of the APGST Act, is issued granting a general exemption, then there is no need to issue separate notification under the CST Act. By virtue of the provisions of Section 8(2-A) of the CST Act, the transactions under the CST Act will get the benefit of exemption.

14. Under the above circumstances, the view of the revisional authority that separate notification under the CST Act is required in order to avail the benefit of exemption, in addition to the notification issued u/s 9(1) of the APGST Act, is clearly erroneous and therefore the impugned order is liable to be set aside.

15. The impugned order of the revisional authority is accordingly set aside and the order of the Appellate Deputy Commissioner (CT) dated March 27, 1992 is restored.