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Seven Hills Par Boiled Rice Mill Vs Commissioner of Commercial Taxes and Others

Court: Andhra Pradesh High Court

Date of Decision: Nov. 18, 2004

Acts Referred: Andhra Pradesh General Sales Tax Act, 1957 â€" Section 21
Andhra Pradesh General Sales Tax Rules, 1957 â€" Rule 6(1)(1)
Central Sales Tax Act, 1956 â€" Section 14, 15, 2, 8A, 8A(1)

Citation: (2008) 11 VST 184

Hon'ble Judges: S. Ananda Reddy, J; Bilal Nazki, J

Bench: Division Bench

Advocate: M.V.J.K. Kumar and B.A. Padmanabha Rao, for the Appellant; Government Pleader, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S. Ananda Reddy, J.
These writ petitions are filed by the registered dealers, who are the rice millers, aggrieved by the order of the Sales

Tax Appellate Tribunal in Satyanarayana Raw and Boiled Rice Mill v. State of A.P. 2002 34 APSTJ 153, and the consequential circulars issued

by the Commissioner of Commercial Taxes, dated February 24, 2003 directing all the officers to follow the said decision, and also the

consequential revision orders passed by the Deputy Commissioner (CT), revising the order of assessment made under the Central Sales Tax Act,

1956 (hereinafter referred to as ""the Act"").

2. In all these cases assessments were framed under the provisions of the Act by the respective assessing officers computing the benefit u/s 8A(1)

(a) by applying the formula and thereafter granted the benefit of rebate in terms of Section 15(c) of the Act and thus determined the tax liability of

the respective dealers. However, the revisional authorities issued notices after a lapse of more than one year, proposing to revise the said

assessments on the ground that the assessments as framed granting the rebate in terms of Section 8A read with Section 15(c) was in excess of the

relief to which the dealers are entitled. Thereafter, the revisional authority revised the assessment in terms of the notice observing that the net tax

due arrived was the difference between the central sales tax collections and the rebate amount. The central sales tax thus payable was much lower

than the amount actually collected. Therefore, the dealer was not entitled for rebate as computed by the assessing officer, but was eligible only to a

lesser sums (Rs. 1,76,700 in W. P. No. 15159 of 2004) and therefore, revised the assessment, holding that the assessments as framed are

irregular and prejudicial to the interest of the Revenue, and thus modified the assessments.

3. In the normal course, these writ petitions would not have been entertained by this Court as there is a remedy of appeal to the Appellate Tribunal

in terms of Section 21 of the Andhra Pradesh General Sales Tax Act, 1957, but in view of the earlier referred decision of a Two-member Bench

of the Tribunal, which did not refer to an earlier decision of a three-Member Bench decision of the Tribunal, where a contrary view had been

expressed, and, further, as the result is already known, and as the authorities failed to follow the larger Bench decision of the Tribunal, instead of

following a smaller bench decision, this Court inclined to consider the matters on merit. Though certain matters were disposed of earlier by a Bench

of this Court on the ground that the departmental authorities are bound by the larger Bench decision of the Tribunal, but we felt that it is proper and

just to consider the issue on merit. Therefore, these writ petitions were taken up and heard on merits.

4. The learned Counsel for the petitioners contended that all the dealers have purchased paddy within the State, while the rice that resulted on

conversion was sold in the inter-State transactions. It is also the case of the dealers that the paddy that was procured by the dealers suffered tax,

as tax is leviable at the first purchase point at four per cent. Similarly, it is also their case that they have collected central sales tax on the rice that

was sold after conversion of the paddy procured by them. Therefore, according to the petitioners, they are entitled for the rebate in terms of

Section 8A(1)(a) read with Section 15(c) of the Act. As per the said provisions, after determining the central sales tax component from out of the

aggregate sale prices of rice, the tax that had suffered on the paddy has to be allowed by way of rebate and it is only the differential amount of

central sales tax, which is payable by the dealers. It is also the case of the petitioners that the assessing officers accepted the said contention and

framed the assessments granting the rebate in respect of the tax paid on the paddy from out of the central sales tax component. But, however, the

said assessments were revised by the revisional authorities in the light of the judgment of the Tribunal in Satyanarayana Raw and Boiled Rice Mill''s

case 2002 34 APSTJ 153. According to the petitioners, the Tribunal did not decide the issue correctly in Satyanarayana Raw and Boiled Rice

Mill''s case 2002 34 APSTJ 153, and, in fact, the said judgment was rendered by a two-Member Bench of the Tribunal ignoring an earlier

decision rendered by a Three-Member Bench of the Tribunal in Badarinadh Rice Mill v. State of A.P. 1999 29 APSTJ 181. It is stated that the

said judgment was rendered by a Three-Member Bench as early as on July 27, 1999 and without even referring to the said decision, the later

Two-Member Bench decided the issue on July 21, 2000 taking totally an illegal and illogical view of the provisions in question. The learned

Counsel also contended that almost identical issue was considered by this Court in State of A.P. v. S. Laxminarayana Gupta 1995 21 APSTJ 21,

where this Court considered the provisions of Section 8A(1)(a) and the tax deductible as and by way of rebate in respect of the tax levied on the

paddy, which yielded the said rice. Though the said judgment is binding on the Tribunal, the Tribunal failed to consider and follow the same.

Almost similar issue was considered by a division Bench of this Court in Sri Laxmiganapathi Enterprises v. Commercial Tax Officer 2000 117

STC 338 : 1999 29 APSTJ 227, while considering almost identical formula that contained in Section 8A(1)(a) of the Act, under Rule 6(1)(1) of

the Andhra Pradesh General Sales Tax Rules, 1957. In fact, this Court had even referred to the Commissioner''s circular and held that the same

runs counter to the decisions of the High Court as well as the Tribunal. Therefore, the learned Counsel sought to declare that the Tribunal did not

interpret the provisions correctly in Satyanarayana Raw and Boiled Rice Mill''s case 2002 34 APSTJ 153, as the said interpretation given by the

Tribunal is contrary to the provisions as well as the decisions of this court.

5. The learned Special Government Pleader for Taxes, however, sought to support the order of the Tribunal as well as the consequential circular of

the Commissioner of Commercial Taxes and the orders of the revisional authorities.

6. From the above, the issue that arises for consideration is what is the deduction that is available to the dealers in terms of Section 8A(1)(a), read

with Section 15(c) of the Central Sales Tax Act, 1956?

7. For convenience it would be appropriate to extract the above relevant provisions here, including the definition of the term turnover.

Section 2(j).--''Turnover'' used in relation to any dealer liable to tax under this Act means the aggregate of the sale prices received and receivable

by him in respect of sales of any goods in the course of inter-State trade or commerce made during any prescribed period and determined in

accordance with the provisions of this Act and the Rules made thereunder.

Section 8A. Determination of Turnover.--(1) In determining the turnover of a dealer for the purposes of this Act, the following deductions shall be

made from the aggregate of the sale prices, namely:

(a) the amount arrived at by applying the following formula:

Rate of tax Ã¯Â¿Â½ aggregate of sale prices

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100 plus rate of tax

Provided that no deduction on the basis of the above formula shall be made if the amount by way of tax collected by a registered dealer, in

accordance with the provisions of this Act, has been otherwise deducted from the aggregate of sale prices.

Explanation.--Where the turnover of a dealer is taxable at different rates, the aforesaid formula shall be applied separately in respect of each part

of the turnover liable to a different rate of tax.

Section 15. Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State.--Every sales tax law of a State shall,

insofar as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and

conditions, namely:

(a) to (b).

(c) where a tax has been levied under that law in respect of the sale or purchase inside the State of any paddy referred to in Sub-clause (i) of

Clause (i) of Section 14, the tax leviable on rice procured out of such paddy shall be reduced by the amount of tax levied on such paddy.

Explanation III to Schedule III of APGST Act, 1957.--For the purpose of items 21 and 22, where a tax has been levied under this Act in respect

of the sale or purchase inside the State of any paddy, the tax leviable on rice procured out of such paddy shall be reduced by the amount of tax

levied on such paddy.

8. On a perusal of the above provisions, it is clear that the term turnover as defined means the aggregate of the sale prices received and receivable

in respect of any goods in the course of inter-State trade or commerce and determined in accordance with the provisions of the Act and the Rules

made thereunder. Further, the determination of the turnover is provided u/s 8A, which shall be determined after allowing deductions, when the

aggregate of the sale price is inclusive of Central sales tax, which is not separately collected. The statute provides a formula for the determination of

the tax component from out of the aggregate of the sale prices. The proviso contained therein restricts the application of the said formula if the

amount by way of tax collected by the registered dealer has been otherwise deducted from the aggregate of the sale prices. Further, as per Section

15(c) where the tax has been levied on the sale or purchase of paddy, the tax leviable on the rice procured out of such paddy shall be reduced by

the amount of tax levied on such paddy. To the same effect is the Explanation III to Third Schedule to the APGST Act. From this it is clear that the

entire amount of tax levied on paddy shall be allowed as deduction from out of the tax collected from the rice after conversion of such paddy.

Therefore, it is very clear that where a dealer has collected Central sales tax on the rice while effecting the sale of rice in the course of inter-State

trade and if such rice had been procured out of the paddy purchased within the State, which had suffered tax, such tax levied on the paddy has to

be deducted from the Central sales tax component and it is only the differential amount of Central sales tax, i.e., central sales tax collected over

and above the tax paid on the paddy, which is due by the dealer. A perusal of the assessment shows that the assessing officer had determined the

Central sales tax component by applying the formula, and thereafter allowed the rebate in respect of the tax component levied on the paddy and

thus determined the tax due. But, however, the said order was revised by the revisional authority relying upon the decision of the Tribunal in

Satyanarayana Raw and Boiled Rice Mill"s case 2002 34 APSTJ 153, and held that the dealer is eligible for exemption of the Central sales tax

collections for a sum of Rs. 1,76,700 only. The amount of Central sales tax collection as well as the tax suffered on the paddy, there is no

variation, as the same figures have been adopted by the revisional authority. But without giving any reasons simply referring to the judgment of the

Tribunal the revisional authority held that the assessee (in W.P. No. 15159 of 2004) was held not entitled for a rebate of Rs. 4,42,883

(representing tax paid on paddy).

In order to understand the said view of the revisional authority, as the revisional order does not contain the reasons, it would be proper to consider

the decision of the Tribunal that was followed by the revisional authority.

9. In Satyanarayana Raw and Boiled Rice Mill"s case 2002 34 APSTJ 153, the matter came up in appeal before the Tribunal when the dealer

questioned the revision order of the Deputy Commissioner (CT) under which the order of assessment under the Act was revised. In that case, the

dealer is similar to the present dealers and was carrying on business as a rice miller. The dealer was assessed by the Commercial Tax Officer under

the Act determining the gross turnover at Rs. 2,00,79,774 and net turnover at Rs. 1,89,99,387. While allowing rebate on the corresponding paddy

involved in the inter-State sales of rice and broken rice, the Commercial Tax Officer has allowed deduction of Central sales tax collected from the

aggregate of the sale price of rice and broken rice sold in inter-State trade. The Deputy Commissioner (CT) while revising the assessment

observed that the tax worked out as per the formula on the total inter-State sales of rice and broken rice on the Central sales tax shown to have

been collected cannot be deducted from the turnover as the tax paid on corresponding paddy has been granted rebate u/s 15(c) of the Act.

According to him, the tax qualified for exemption from Central sales tax collection is only to the extent of tax on rice and broken rice, minus tax

rebate granted on corresponding paddy. In fact, the figures given in that case show that the assessing officer allowed deduction of tax element of

Rs. 7,59,975 from out of the Central sales tax component. But the revisional authority took the view that the dealer is liable to pay Central sales

tax of Rs. 33,453 and therefore, he is entitled for deduction only to that extent and therefore there is excess deduction of Rs. 7,26,522. When the

said order of revision was assailed before the Tribunal, the Tribunal also took the same pedantic view, expressed through the Departmental

Member of the Tribunal. The Tribunal totally failed to take note of the already existing decisions of this court, which are binding on the Tribunal,

apart from ignoring its own earlier decision rendered in Badarinadh Rice Mill''s case 1999 29 APSTJ 181, where the Tribunal has even followed

the decisions of this court. The observations of the Tribunal show that the appellant claimed a larger deduction than the amount due by way of

Central sales tax to the department. Therefore, such claim was not the intention of the Parliament and thus held ""The Parliament intended to grant

the benefit of exemption only to the extent of central sales tax component of Rs. 33,453"". The Tribunal has even gone to the extent of holding that

the dealer in that case had collected in excess of the liability of Central sales tax. Therefore, even the dealer was liable for penalty. Though nowhere

it was held that the dealer has collected tax in excess of 4 per cent prescribed under the Schedule, where such sales are accompanied by the C

forms. The Tribunal has also gone to the extent to construe the expression aggregate of the sale price as net aggregate of the sale prices on the

premise that if the provision is not construed in such a manner, it may lead to manifestly unjust result. The term net aggregate of the sale price was

not at all even defined under the provisions of the Act. But the Tribunal had gone to the extent of equating it with aggregate of the sale price. The

said interpretation given by the Tribunal is clearly against the plain and simple language contained in the relevant provisions.

10. This issue was considered by a division Bench of this Court in S. Laxminarayana Gupta''s case 1995 21 APSTJ 21, as early as in the year

1994. In that case the assessing officer framed assessment for the year 1981-82 after deducting an amount of Rs. 2,72,899 from the total turnover

applying the formula contained in Section 8A(1)(a) of the Central Sales Tax Act, 1956. The said order of assessment was revised by the Deputy

Commissioner on the premise that the said assessment is prejudicial to the interest of the Revenue. On further appeal to the Tribunal, the Tribunal

set aside the order of the Deputy Commissioner and upheld the application of the formula by the assessing officer for ascertaining the net turnover.

The Division Bench while considering the provisions of Section 8A held that whenever the aggregate of the sale price is inclusive of the Central

sales tax, the tax component has to be arrived at by applying the formula prescribed in Section 8A(1)(a) and rebate has to be allowed if the tax

component is not otherwise allowed as deduction, as contemplated under the proviso to the said provision. The Bench also referred to an earlier

decision in Rallis India Limited Vs. The State of Andhra Pradesh, wherein it was held that if the aggregate of the sale price is not inclusive of the tax

component, there is no occasion to apply the formula for reducing the aggregate of the sale price and it was also held that the burden to prove that

the aggregate of the sale price is inclusive of the central sales tax is on the dealer.

11. In Sri Laxmiganapathi Enterprises''s case 2000 117 STC 338 : 1999 29 APSTJ 227, another division Bench of this Court had considered the

provisions of Section 8A read with Section 15(c) of the Act while interpreting the provisions of Rule 6(1)(1) where identical formula as contained

in Section 8A(1)(a) was prescribed for providing deduction of the sales tax in determining the net turnover of a dealer in respect of sale of rice

within State. While interpreting the above provisions, the Bench had even considered the circular of the Commissioner of Commercial Taxes dated

February 24, 1998 where the Commissioner clarified that the deduction towards tax component on rice will be worked out on the basis of the net

tax payable on sale of rice after rebate is given on the basis of the tax paid on the corresponding purchase of paddy consumed. The division Bench

held that the said circular issued by the Commissioner runs counter to the decisions of both the High Court and the Tribunal, and therefore, set

aside the assessments framed in conformity with the said circular. The division Bench has categorically approved the application of the formula

contained in Section 8A(1) for determining the tax component from which the tax paid on paddy purchased, which yielded rice, has to be allowed

by way of rebate u/s 15(c) of the Act. Holding so, the order of the revisional authority was set aside in the writ petitions and the assessing

authorities are directed to make fresh assessments without reference to the circular of the Commissioner.

12. In fact, an earlier decision of the Tribunal in the case of Badarinadh Rice Mill"s case 1999 29 APSTJ 181, had dealt with similar issue and the

Tribunal (consisted of Three Members) after referring to the earlier orders of this Court applied the formula for determining the Central sales tax

component from which rebate has to be allowed in terms of Section 15(c) of the Act. In spite of such earlier decision of the very same Tribunal,

which was decided as early as in 1999, without referring to the said decision, and without even distinguishing the said decision if there are any

grounds, the Tribunal (consisted of two members) took totally a different view; in effect the order reflecting the substance of the circular of the

Commissioner, which was held to be bad by this court.

13. Under the above circumstances, this Court declares that the interpretation of Section 8A(1)(a) read with Section 15(c) of the Act by the

Tribunal in Satyanarayana Raw and Boiled Rice Mill"s case 2002 34 APSTJ 153, is incorrect and it does not reflect the intention of Legislature in

formulating the said provision. Consequently, the circular of Commissioner dated February 24, 2003 and the revisional orders are set aside.

In the result, the writ petitions are allowed. No costs.