

## Manchukonda Jewellery House and Others Vs Commissioner of Commercial Taxes, Andhra Pradesh, Hyderabad and Others

**Court:** Andhra Pradesh High Court

**Date of Decision:** Dec. 11, 1989

**Acts Referred:** Andhra Pradesh General Sales Tax Act, 1957 " Section 6A

**Citation:** (1991) 80 STC 195

**Hon'ble Judges:** Yogeshwar Dayal, C.J; A. Lakshmana Rao, J

**Bench:** Division Bench

**Advocate:** P. Venkatarama Reddy and A. Sarveswara Rao, for the Appellant; The Government Pleader for Commercial Taxes, for the Respondent

### Judgement

Yogeshwar Dayal, C.J. and A. Lakshmana Rao, J.

This judgment will dispose of the above ten writ petitions since common questions are

involved in all of them. Facts in this judgment are referred to from Writ Petition No. 13401 of 1989.

2. The petitioner-firm, M/s. Manchukonda Jewellery House, Visakhapatnam, deals in gold and silver articles and jewellery. The petitioner at times

purchases old jewellery like gold bangles, gold chains, etc., and old silver articles and utilises them in the manufacture of gold jewellery and

silverware. Some of the old jewellery containing costly stones are resold after polishing and repair, if any. While taking weightment before purchase

of the gold jewellery, even if the jewellery is studded with precious stones, the same are rarely removed.

3. For the assessment years 1984-85 to 1986-87, the petitioner-firm was initially assessed to sales tax under the Andhra Pradesh General Sales

Tax Act, 1957, by the Deputy Commercial Taxes Officer, Visakhapatnam. By the said assessment orders, the petitioner has been subjected to tax

on the purchase value of old gold ornaments and silver articles from unregistered persons u/s 6-A of the aforesaid Act at the rate of 2 per cent

presumably in view of entries 20 and 21 of the First Schedule to the said Act.

4. While so, the Commissioner of Commercial Taxes, Andhra Pradesh, Hyderabad, issued a circular in his Rc. No. A4/246/88 dated October 5,

1988. This is addressed to various subordinate officials, including the Appellate Deputy Commissioners, stating inter alia, that in view of the

judgment of the Supreme Court reported as Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. G.S. Pai and

Co., , purchase of old ornaments from unregistered dealers have to be treated as general goods and taxed at general rate.

5. Having regard to these instructions of the Commissioner of Commercial Taxes, the Deputy Commercial Tax Officer took up reassessment for

the years 1984-85 to 1986-87 and levied sales tax at higher rate u/s 6-A on the purchase value of gold ornaments and articles of silver. After

reassessment for the aforesaid years, orders were passed on July 19, 1989, which have been annexed as P4 to P6 in the writ petition. For the year

1988-89, the assessment orders were made for the first time on similar lines by order dated July 25, 1989, vide annexure P7.

6. Aggrieved by the reassessment orders, the petitioner preferred appeals before the Appellate Deputy Commissioner, Commercial Taxes,

Kakinada and also sought stay but the appellate authority has not disposed of the stay applications and, in fact, it is not likely to take any

independent decision in view of the aforesaid circular of the Commissioner of Commercial Taxes dated October 5, 1988. The petitioner also

submitted that the Deputy Commercial Tax Officer, Visakhapatnam, is coercing the petitioner to pay the disputed tax and is threatening

prosecution and has already issued the notice dated September 15, 1989, demanding the tax in dispute. The said notice has been filed as annexure

P9. It is said that the tax for the four years is Rs. 25,459 and the petitioner is not in a position to pay the aforesaid liability. In the counter-affidavit,

the position taken by the writ petitioner is traversed. The learned Government Pleader has brought to our notice the circular of the Government of

Andhra Pradesh bearing No. 20487/CT.II.2/89-2 dated October 27, 1989. The effect of this circular of the Government is that the view taken by

the Commissioner of Commercial Taxes in his circular dated October 5, 1988, has been dissented from and the Commissioner has been requested

to cancel the circular issued earlier by him on October 5, 1988 and to issue instructions not to reopen assessments in pursuance of the said circular

and he was also requested to stay the collection of tax where assessments or revisions were made in pursuance of the circular dated October 5,

1988. It has been pointed out by the learned Government Pleader for Commercial Taxes that in pursuance of the Government circular dated

October 27, 1989, the Commissioner has also in a communication dated November 29, 1989, brought to the notice of the taxing authorities that

entry 21 of the First Schedule, namely, ""Articles and jewellery made of bullion or species or both excluding precious stones"" shall be read along

with explanation I and it was also noticed in the circular that his earlier circular dated October 5, 1988, has been challenged before the High Court

in the present writ petition apart from two other writ petitions. The Commissioner, accordingly, has directed the assessing authorities not to reopen

assessments in pursuance of the circular dated October 5, 1988 and to stay collection of tax where assessments or revisions were made in

pursuance of the circular dated October 5, 1988 and await further directions in the matter after disposal of the case by the High Court.

7. Entries 20 and 21 of the First Schedule to the Andhra Pradesh General Sales Tax Act, 1957, read as follows :

20. Bullion and specie.

21. Articles and jewellery made of bullion or species or both excluding precious stones.

8. The Supreme Court in the case reported as Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. G.S. Pai and

Co., , was dealing with an entry similar to entry 20 seen in the Kerala Act. The Supreme Court was not concerned with an entry like entry 21,

which we have quoted above. The circular dated October 5, 1988, does not take into account the wordings of explanation I to entry 21.

Explanation I reads as follows :

The expression "bullion" in items 20 and 21 means pure gold or silver and includes gold or silver mixed with copper, lead or any other kind of

base metal.

9. It is thus clear that the type of articles dealt with by the petitioner is clearly covered by entry 21 and is further explained by explanation I. The

Government of Andhra Pradesh has already directed the Commissioner of Commercial Taxes in its communication dated October 27, 1989, to

cancel the circular dated October 5, 1988. The Commissioner has also issued revised instructions dated November 29, 1989. However, since the

appeals are still pending for the assessment years 1984-85 to 1986-87 against the reassessment orders and the assessment has been made for the

year 1988-89, we find it appropriate to declare that the circular dated October 5, 1988, appears to have been issued ignoring entry 21 of the First

Schedule and the explanation I thereto and the view expressed by the Government in its circular dated October 27, 1989, is correct. We would,

accordingly, declare the aforesaid circular dated October 5, 1988, to be ultra vires of entry 21 of the First Schedule to the Andhra Pradesh

General Sales Tax Act, 1957, and quash it. The assessing authorities and the appellate authorities are directed to dispose of the assessments and

the appeals in the light of the observations made in this judgment. The parties are left to bear their own costs in the writ petitions in view of the

stand of the learned Government Pleader. Government Pleader's fee Rs. 150 in each. There shall be stay of recovery of tax pending disposal of

the appeals.