(1994) 03 AP CK 0037

Andhra Pradesh High Court

Case No: Spl. Appeal No''s. 26 and 27 of 1986

Circar Enterprises		APPELLANT
	Vs	
Commissioner of Commercial Taxes		RESPONDENT

Date of Decision: March 1, 1994

Acts Referred:

- Andhra Pradesh General Sales Tax Act, 1957 - Section 20, 20(1), 6C

Citation: (1995) 97 STC 40

Hon'ble Judges: T.N.C. Rangarajan, J; M.N. Rao, J

Bench: Division Bench

Judgement

T.N.C. Rangarajan, J.

These two special appeals are directed against the orders of the Commissioner of Commercial Taxes revising the appellate orders exercising his powers u/s 20 of the Andhra Pradesh General Sales Tax Act, 1957. He found that in the first case - M/s. Circar Enterprises - the assessee was a dealer in bottled beer on wholesale basis, that the dealer had not produced the accounts and, therefore, in the assessment order, there being no proof that the bottles used as containers of beer had been received back and the amount shown as deposits had been returned, the turnover of Rs. 1,11,830 representing the value of the bottles had been assessed at a lower rate of 6 1/2 per cent as against 10 1/2 per cent applicable to beer. On appeal, the Appellate Deputy Commissioner (Commercial Taxes) accepted the contention of the assessee that the amount shown as deposit and bottles were liable to be returned and could not, therefore, form part of the sale price.

2. In the second case - M/s. Poorna Wines - the assessment proceeded on the basis that the value of the bottles formed part of the price of the beer itself and the entire turnover was taxed at 102 per cent. On appeal, the Deputy Commissioner (Appeals), separated a turnover of Rs. 7,09,288 as representing the value of the bottles and directed it to be taxed at a lower rate of 6 1/2 per cent. In both the cases, the

Commissioner of Commercial Taxes issued notices to the effect that the so-called bottle deposit should be treated as part of the taxable turnover and assessed at the rate of 10 1/2 per cent applicable to the contents. However, while passing the orders, he restored the assessment orders. Thereby, in one case, the rate of tax is taken at 10 1/2 per cent while in the other case, it is taken at 6 1/2 per cent.

3. In these appeals, the main contention of the assessees, as formulated by the learned counsel, was that the amount collected as deposits could not form part of the taxable value at all. But this contention, it is fairly stated, is untenable in view of the decisions of this Court in United Breweries Ltd. Vs. State of Andhra Pradesh, and Mysere Breweries Limited v. State of Andhra Pradesh [1992] 86 STC 394 wherein it was held that the turnover representing the packing material must also be treated as part of the taxable turnover. The learned counsel for the assessees, therefore, raised an objection regarding the jurisdiction of the Commissioner of Commercial Taxes to revise the orders of the Deputy Commissioner (Appeals). It was submitted that under rule 44-A of the Andhra Pradesh General Sales Tax Rules, 1957, the Deputy Commissioner (Appeals) was shown as a subordinate only of the Joint Commissioner, Commercial Taxes (Legal) and, therefore, only the Joint Commissioner had the jurisdiction to revise the order of the Deputy Commissioner (Appeals) and not the Commissioner of Commercial Taxes. We find that rule 44-A originally contained the words "Joint Commissioners" and "Deputy Commissioners" as subordinate to the Commissioner of Commercial Taxes, but by G.O.Ms. No. 1445, Revenue dated November 5, 1986, the words "Deputy Commissioner" were substituted by the words "Deputy Commissioners including Appellate Deputy Commissioners", a phrase which appears also in item No. 2 under the jurisdiction of the Joint Commissioner (Legal). Our attention was drawn to the decision of this Court in Poonam Traders v. State of Andhra Pradesh [1994] 92 STC 226: (1992) 15 APSTJ 227 where this amendment was noticed. After noting that it was not retrospective, the Bench was not inclined to disturb the revised order as it was thought to be a futile exercise. It may be noted that the learned counsel is basing his argument on the fact that the orders under revision in these cases were passed on July 17, 1986, a couple of months before the amendment of the rule. The learned counsel also relied upon the decision in Kandaswamy Gounder and Company Vs. Commissioner of Commercial Taxes, where a Division Bench held that under rule 44-A, an Appellate Deputy Commissioner can be subordinate only to the Joint Commissioner (Legal). But we find that even without reference to rule 44-A, the power to revise is granted by section 20(1) of the Act to the Commissioner of Commercial Taxes in respect of any order passed or proceeding recorded by any authority, officer or person subordinate to him. Such a wide power cannot be restricted by the rule. In the latest pronouncement of the Supreme Court in Gauri Shankar Gaur and Others, etc. Vs. State of U.P. and Others, , it was observed that in the practice of construing a statute, it should be in such a way as to prevent evasion of its terms. If we were to assume that the rule unnecessarily restricts the broad

power granted u/s 20, we would only be restricting the operation of the section and creating practical difficulties. Moreover, even if we look at the rule as it stood before the amendment, we find that it included "Deputy Commissioner", which term should normally include also a Deputy Commissioner having appellate powers. A Deputy Commissioner, who is a subordinate of a Joint Commissioner, is certainly a subordinate of the Commissioner, and it cannot be said that the Commissioner, who can interfere with the order of the Joint Commissioner, cannot interfere with the order of his subordinate, viz., the Deputy Commissioner (Appeals). From whatever point of view we look at this rule, read with the section, we have no hesitation in holding that the Commissioner had ample powers to interfere with the order of the Deputy Commissioner (Appeals).

4. Lastly, it was argued that since the Supreme Court had laid down certain tests in the decision in Raj Sheel v. State of Andhra Pradesh [1989] 74 STC 379 to find out whether there is sale of container independent of the sale of the contents and had remanded the matter in that case for fresh investigation, a similar order of remand must be given in these cases to find out the actual facts. We are unable to agree with this request of the assessees inasmuch as the assessees did not take the opportunities given at the earliest stage as it is noted in the assessment orders that the assessees did not produce the accounts despite opportunities given. We also find that the price was a single price for the bottled beer and the amount of turnover relating to bottles claimed as exemption related only to debit notes issued subsequently. This was only an artificial bifurcation of the price which the assessees have paid to the manufacturer while purchasing the goods and the price received while reselling to the retail dealers, which is a single amount for the sale of the goods as bottled beer. We must also refer to the provisions of section 6-C of the Act, which deems that the material in which the goods are packed shall be deemed to have been sold along with the goods when sold in packed condition and the rate of tax will be as applicable to the sale of the contents. In the circumstances, we are of the opinion that the orders of revision passed by the Commissioner of Commercial Taxes are correct and have to be upheld.

5. In the result, the appeals are dismissed. No costs.

6. Appeals dismissed.