



IN THE HIGH COURT OF ANDHRA
PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3529]

MONDAY, THE SECOND DAY OF FEBRUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION NO: 21240/2019

Between:

1. ANDHRA PRADESH STATE CIVIL SUPPLIES CORPORATION LIMITED,, SRI SAI TOWERS, DOOR NO.10-152/1, 4TH AND 5TH FLOORS, ASHOK NAGAR, BESIDES SIRES COMPANY, BANDARU ROAD, KANURU, VIJAYAWADA - 520 007, KRISHNA DISTRICT, ANDHRA PRADESH. REP RATED BY ITS VICE CHAIRMAN AND MANAGING DIRECTOR, MRS. APALA SURYA KUMARI, W/O MR. A.V. SATYANARAYANA RAO.

...PETITIONER

AND

1. THE ASSISTANT COMMISSIONER CT, (INT)(LTU), O. H DIVISION, D.NO. 74-2-60, KMR SONS PLAZA, ALAMALAKUDURU ROAD, VIJAYAWADA, KRISHNA DIST
2. THE DEPUTY COMMISSIONER CT NO II DIVISION, .NO. 74-2-60, KMR SONS PLAZA, ALAMALAKUDURU ROAD, VIJAYAWADA, KRISHNA DIST
3. THE COMMISSIONER OF COMMERCIAL TAXES, STATE OF ANDHRA PRADESH, D.NO. 5-59, R.K. SPRING VALLEY APARTMENTS, ANDAR ROAD, EEDUPUGALLU VILLAGE, KANKIPADU MANDAL - 521 144, KRISHNA

DISTRICT, ANDHRA PRADESH.

4. THE STATE OF ANDHRA PRADESH, REP. BY ITS SECRETARY, REVENUE (CT) DEPARTMENT, SECRETARIAT BUILDINGS, VELAGAPUDI - 522 503, GUNTUR DISTRICT, ANDHRA PRADESH.

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, Order or Direction, one, more particularly in Ape nature of Mandamus, declaring the Assessment Order dated 10.08.2016 passed in the 1st Respondent for the period June, 2014 to Mar, 2015, as arbitrary, illegal, bad kw, without jurisdiction, violative of principles of natural justice, violative of Article 14 and Article 265 of the Constitution of India, and contrary to settled legal position, 004 to consequently set aside the same in the interests of justice

IA NO: 1 OF 2019

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of all further proceedings, pursuant to the Assessment Order dated 10.08.2016 passed by the 1st Respondent for the period June, 2014 to March, 2015 under the Andhra Pradesh Value Added Tax Act, 2005, including any recovery, pending disposal of the above Writ petition and to pass

Counsel for the Petitioner:

1. A V A SIVA KARTIKEYA

Counsel for the Respondent(S):

1. GP FOR COMMERCIAL TAX (AP)

The Court made the following:

HON'BLE SRI JUSTICE RAO RAGHUNANDAN RAO

AND

HON'BLE SRI JUSTICE T.C.D. SEKHAR

WP No.21240 OF 2019

ORDER:- (Per Hon'ble Sri Justice T.C.D. Sekhar)

1. The present writ petition is filed questioning the assessment order dated 10.08.2016 passed by the 1st respondent for the period June, 2014 to March, 2015 under AP VAT Act, 2005.

2. The petitioner is State Government undertaking Corporation engaged in the distribution of essential commodities in the State of Andhra Pradesh. The main object of the petitioner to bring down the prices of essential commodities and to provide equitable distribution of the same at controlled prices through its Public Distribution System, on the subsidy being provided by the State of Andhra Pradesh. It is further case of the petitioner that, sale prices of the commodities are fixed by the State Government and the petitioner Corporation is carrying on its activities with no profit motive.

3. The petitioner is a registered dealer both under the Central Sales Tax Act, 1956 and Andhra Pradesh Value Added Tax Act, 2005 on the rolls of the 1st respondent. The petitioner procures commodities viz., Rice, Wheat, Sugar and various Dhals and supplies the same to Fair Price Shops for Public Distribution System at the price fixed by the government in tune with various government schemes. It purchases the commodities through open tenders from the VAT dealers and claims Input Tax Credit. Similarly, it also purchases paddy from farmers and supplies the same to rice millers for milling in terms of the guidelines issued by the Central Government as the petitioner does not have any milling facilities of its own.

4. It is further case of the petitioner that, rice received from the millers is about 67% of the paddy supplied to them and the remaining 33% of paddy portion would be in the form of by-products like brokens, bran and husk. It is further case of the petitioner that, as per the agreement entered into with the millers, based on the guidelines issued by the Central Government, the by-products i.e., brokens, bran and husk etc., obtained in the shelling of paddy shall be treated as the property of the millers

and it's the responsibilities of the millers to pay taxes on by-products. The petitioner is remitting tax on sale of price.

5. Be that as it may, the 1st respondent after conducting audit, issued show cause notice dt.02.01.2016 proposing to levy tax in terms of Section 4(4) of AP VAT Act on the ground that commodities i.e., brokens, bran and husk are transferred in favour of the millers and the petitioner has under declared the output tax on sales of sugar and red gram dhal on the ground that the petitioner sold the same at a far lesser price than the purchase costs and proposed to restrict the Input Tax Credit claimed by the petitioner on sugar and red gram dhal.

6. The petitioner filed its objections dated 04.02.2016, 05.08.2016 and 10.08.2016. Further it is the case of the petitioner, that the 1st respondent without considering the objections, passed impugned order dt.10.08.2016 restricting the ITC claimed on sugar and dhal apart levying purchase tax @ 5% under Section 4(4) (iii) of the AP VAT Act on the purchase of price of proportionate paddy to brokens, ban and husk. Aggrieved by the said order of the assessment, the present writ petition is filed.

7. The 1st respondent filed counter affidavit stating that the writ petition is not maintainable inasmuch as, there is efficacious alternative remedy of filing appeal against the order under challenge. It is contended in the counter affidavit that sugar and red gram dhal were sold at a price lesser than the price value and the petitioner had claimed Input Tax Credit on the purchase value, as such the Input Tax Credit was proportionately restricted as the sale value is lesser than the purchase value. It is further contended that when the purchased goods and sold goods are same, Input Tax Credit can be claimed without any restriction and the petitioner without restricting the Input Tax Credit proportionately wrongly availed the same, therefore the impugned order was rightly passed.

8. It is further case of the respondents that as the petitioner is receiving only 67% of rice from the millers out of the paddy supplied by it by leaving the remaining 33% of paddy portion to the millers in the form of by-products like brokens, ban and husk towards consideration for converting the paddy into rice. Therefore, it was proposed to levy tax as per Section 4(4) of the AP VAT, 2005 on the by-products left to the millers.

9. Heard counsel for the petitioner and the learned Government Pleader for Commercial Taxes.

10. Perused the records.

11. The counsel for the petitioner would submit that the petitioner purchased the commodities from the dealers in the State of AP and sells the same for a lesser price as per the directions and price fixed by the State Government in public interest and the petitioner has no other alternative but to sell at the price fixed. It is further contended that the goods are sold in the same form under the Public Distribution System and the petitioner is entitled to claim Input Tax Credit fully on all the taxable goods purchased as per Rule 20 (4)(a) of AP VAT Rules, 2005. For proper appreciation of the case the said Rule is extracted as under:

“Where any VAT dealer buys and sells the goods in the same form, the input tax credit can be claimed fully in respect of all the taxable goods purchased for every tax period excluding the tax paid on the purchase of any goods mentioned in sub rule (2). Such VAT dealer is required to make a declaration in the Form VAT 200D for every tax period along with tax return”.

12. In the case on hand, there is no dispute that the petitioner is purchased commodities and sold commodities are the same. Further, the said commodities are being sold at a lesser price inasmuch as the same is being fixed by the State Government on subsidized rates. Apart from the same, as rightly contended by the counsel for the petitioner that the petitioner Corporation is wholly owned State Government Undertaking and its object is to bring down the prices of essential commodities. On perusal of the Rule 20(4)(a) of the VAT Rules, 2005 it is clear that the petitioner purchased and sold the goods in the same form, therefore the question of disallowing the Input Tax Credit claimed by the petitioner is not sustainable. Though, the learned Government Pleader for Commercial Taxes would rely on Rule 20 (2) (m), the same is not applicable to the case on hand. Therefore, the petitioner is entitled to claim Input Tax on the purchase value of sugar and red gram dhal.

13. Coming to the levy of tax on by-products like, broken, ban and husk etc., treating them as consideration for converting the paddy into rice, the assignment order came to be passed levying tax under Section 4(4) of the VAT Act on the petitioner. In this regard, it is pertinent to note that on perusal of the agreement

entered into by the Corporation with the millers, it is clear that the millers have to deliver only the resultant rice. Insofar as, by-products are concerned, they will be left to the millers for no consideration. The 1st respondent treating the by-products can only be termed as “disposal” and levied tax under Section 4(4)(iii) of AP VAT, 2005. As per the said Rule the goods must be “disposed of” and there shall be transfer of title of the goods.

14. In the case on hand, admittedly there is no transfer of by-products inasmuch as they remain with the millers as per the terms of agreement. Therefore, by no stretch of imagination the same can be termed as disposal, inasmuch as there is no transfer of title to the goods.

15. Further, it is the responsibility of the millers to pay Sales Tax/Value Added Tax or any other tax on the wastage left by the petitioner under the agreement. In such circumstances, the order under challenge is not sustainable inasmuch as, there is no under declaration of output tax by the petitioner in relation to by-products left to the millers. Further, this issue is no more *res Integra* as this Court in the case of “**Food Corporation of India Vs. State of Andhra Pradesh**” as held that the value of broken

rice, ban and husk, which are by products of paddy given by the petitioner to different millers for milling, cannot be added to the turnover of the petitioner for the purpose of computation of Sales Tax treating such by products to have been sold by the petitioner to the miller.

16. For the reasons supra, the order under challenge is not sustainable and accordingly the same is set aside. In view of the above observations, the writ petition is allowed and the impugned order dt.10.08.2016 passed by the 1st respondent is set aside.

As a sequel, pending applications, if any shall stand closed.

JUSTICE RAO RAGHUNANDAN RAO

JUSTICE T.C.D. SEKHAR

02.02.2026
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**THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO
AND
THE HONOURABLE SRI JUSTICE T.C.D. SEKHAR**

WP No.21240 OF 2019
Date 02.02.2026

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