HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

TAX REVISION CASE Nos.195, 201, 207 & 227 OF 2009 AND 56, 66, 110, 134 & 136 OF 2010

COMMON ORDER: (Per Hon'ble Sri Justice Ramesh Ranganathan)

These nine Tax Revision Cases are preferred against the common order of the Sales Tax Appellate Tribunal, Hyderabad ("STAT" for short), in Tax Appeal No.102 of 2001 and batch, dated 03.03.2009.

The appeals before the STAT related to different assessment years. The main issue, which is common in all the appeals, relates to levy of sales tax on freight charges shown to have been collected separately in the invoices raised in favour of the buyers. The petitioner herein contended before the STAT that this was a post-sale arrangement; the department had erred in rejecting their claim, and in demanding tax on the turnover relating to freight charges; they dealt with several consumer products and had a marketing net work throughout the length and breadth of India; for the purpose of proper distribution of their products, they appoint clearing and forwarding agents (in short "CFAs") at ideal locations; these CFAs, in turn, supply the goods to Re-distribution Stockists (in short "RSs"); the RSs are also appointed by them to ensure that the products supplied reach the end consumers; they enter into agreements with the CFAs and separate agreements with RSs; under clause 14 of the agreement, entered into with the RSs, their responsibility and risk in the goods cease on dispatch of goods on ex-business premises; the transit risk was that of the buyer; the incidence of freight was, therefore, a post-sale transaction in nature; since the RSs cannot come to their premises each time to make purchases, they had requested the petitioner to arrange for transportation; the freight incurred was recovered from the bills raised on the RSs; their selling terms were such that the delivery was complete once the goods left the premises of their depots; entrustment of the goods to the carrier was for, on behalf of, and at the behest of the RSs; the transporter was the agent of the RSs for the purposes of delivery; clause 15 required them not to make any claim on the transporter; it was only the stockist who could make any claim on the transporter for the damage caused to the goods if any; they merely rendered services to the buyer to liaison with the transporter, provided the buyers desired that they do so; clause 15 clearly established that the sale and delivery was completed at their business premises and, thereafter, the goods were under the ownership and risk of the RSs; and the transport, being an event subsequent to sale and delivery which was completed at their business premises, the freight charged by them was only in the nature of a reimbursement, and was outside the purview of sale consideration.

In the order under revision, the STAT held that the relationship between the petitioner and the RSs was that of a seller and buyer, and not that of a principal and an agent; the CFAs had been appointed as the petitioner's clearing and forwarding agents; clause 5 of the agreement enabled the petitioner to suggest a maximum re-sale price (MRP) in respect of the re-sale or disposal by the RS of stocks of the products supplied to him by the petitioner; the RSs could not charge anything in excess of the MRP suggested by the petitioner; he could, at his discretion, charge a price lower than the price suggested as the maximum re-sale price; under clause 9 of the agreement, all orders for the products, placed by the RSs with the petitioner, were subject to acceptance by the latter; if an order was accepted, the petitioner could deliver the products by such mode of transport, at such times, and in such convenient lots and quantities as they, in their discretion, decided; clause 16 of the agreement disentitled the RSs to make a claim for allowance, or otherwise, with regards the quality of the goods on the date of dispatch, unless notice in writing was given by the RSs to make such claim within seven days after delivery of the goods; and, in default of such notice, the goods sold were required to be deemed in all respects to be in accordance with the contract.

Based on the aforesaid clauses, the STAT held that the petitioner had fixed the maximum re-sale price for the RSs; as a limit is put on the maximum re-sale price to be charged by the RSs, the petitioner had factored in all the ingredients that go into the cost price of the products including freight charges from the depots to the RSs, and the profit to be made by the RSs on re-sale of the petitioner's products; adhering to the maximum re-sale price was legally mandatory, and the RS could not charge a price higher thereto; the MRP varied in different States, more often than not as a direct result of a difference in freight charges incurred from the factory where the goods are manufactured to the place of re-sale; the MRP, therefore, comprised secondary freight as one of the elements; it was a pre-sale consideration; allowance had been made, for secondary freight charges, while fixing the MRP; this situation was comparable to the situation in ***Hindustan Sugar Mills Vs. State of Rajasthan***[1]; it was clear from clause 9 that, when the RS places orders for products to be supplied to them by the petitioner, it is the petitioner's discretion to deliver such products by such mode of transport, and at such times and in such convenient lots and quantities, as the petitioner decided; it was, therefore, not the RS who decided how and when the products were to be delivered to him; the petitioner had the upper hand in all matters connected to transportation, and the RS had no say or discretion in such matters after placing an order with the petitioner; clause 16 suggested that the transportation of goods, from the petitioner's godowns to the RS, was not at the risk of the RS, as the

RS was allowed to make a return claim within seven days for an allowance, if the goods did not reach him in a good condition; the letter addressed by the petitioner to one of their CFAs related to the revision of secondary transportation rates ex Vijayawada CFA; the terms and conditions had been negotiated between the petitioner and the CFA; clause (g) thereof referred to safety in transit; it provided that, in the event of loss or damage arising in the course of transportation of goods, its value should be made good to the petitioner or the RS by the CFA; this letter showed that this type of agreement had been continuing between the petitioner and the CFAs for a long time, and a revision of secondary transportation rates was carried out periodically; as the rates, on which secondary freight charges were to be paid to the CFAs, was fixed much in advance, and that too for a period of two years, it could not be said that the secondary freight was a post-sale arrangement; whatever be the terms and conditions of the agreement between the petitioner and RSs on the one hand, and the petitioner and the CFAs on the other, in practice transportation of goods, from the CFA depots to the RSs, was entirely at the petitioner's discretion; it was not the actual freight charged by the transporter, but a rate mutually agreed upon by the petitioner and the CFAs for secondary distribution by the CFAs from their depots to the RSs; the affidavits obtained from the RSs was only to facilitate the petitioner, and no reliance could be placed thereupon; the petitioner had failed to prove, with the help of documentary evidence, that the freight, which was actually charged by the transporter, for transportation of goods from the depots to the RSs, was the actual amount which was collected by them from the RSs, and then passed on to the transporter; the actual freight was not the basis of settlement of secondary transportation charges, and settlement of accounts, between the petitioner on the one hand and the RSs on the other; the rate, at which the CFAs were to be paid freight charges, was decided much in advance, even before an order was placed by the RSs on the petitioner; such freight charges could not be recorded as other than pre-sale charges; while transportation was an event subsequent to the sale, the documentary evidence submitted by the petitioner showed that freight charges were decided even before a purchase order was received by the petitioner; while the freight element was separately shown in the invoices, it could only be regarded as a colorable device to escape sales tax on the turnover relating thereto; freight was collected proportionately from the RSs, and reimbursed proportionately, as per the previously agreed rates, to the CFAs; the various documents produced by the petitioner showed that proportionate freight was charged from the RSs; the total amount, so shown as charged in the invoices, was recovered from the RSs by the petitioner; a proportionate amount of freight was reimbursed to the CFAs at rates which were previously agreed upon between the petitioner and the CFAs; the freight, which was charged by the CFAs on the invoice, the freight which was collected by the petitioner from the RSs, and the freight which was reimbursed to the CFAs, were mere figures which had no factual connection with each other; the orders placed by the RSs were of various types, and not just ex-godown; what was charged and recovered from the buyer was not the same as what was incurred as freight by the seller; charging and collection of freight on the invoice was not a mere reimbursement; the petitioner had failed to show that the amount charged on the invoice, and collected from the buyer, was the same amount reimbursed by them to the CFA who incurred the freight cost in the first instance; the terms and conditions, laid down in the petitioner's letter to their CFA, were that their agent was responsible for the safety and good condition of the goods, and for every manner of risk in the course of transportation of goods till completion of the delivery of goods at the premises of the RSs; it could not, therefore, be accepted that the delivery was complete once the goods left the premises of the seller or his agent; the petitioner and the CFA had mutually agreed to certain rates, of secondary freight to be charged and collected, for a period of two years even prior to any purchase order being placed by the RSs for this period; the petitioner had failed to prove that the freight charges collected by them was anything other than the pre-determined pre-sale expenditure; the risk during transit, upto the place of destination, was expressly laid at the door of the CFA; the freight charges were pre-sale expenditure, rates of which were pre-determined; and it, therefore, formed part of the sale price and could not be deducted from the turnover chargeable to tax.

After referring to Section 2(s) of the Andhra Pradesh General Sales Tax Act, 1957, the STAT concluded that the freight element formed part of the turnover, as this was an amount set out in the bill of sale, and no deduction towards the same has been expressly indicated in the definition of “turnover”; the petitioner had failed to prove that the amount collected towards freight was the actual amount incurred by the CFA, and the actual amount reimbursed by the petitioner to the CFA; proportionate charging or proportionate collection or proportionate reimbursement of freight could not be accepted to be the freight charges, more so as the petitioner had decided the per tonne rate even prior to receiving the order; what was reimbursed to the CFA was pre-decided and pre-determined; and, under such circumstances, the amounts indicated as freight charges in the invoices could not be considered to be freight charges, but could only be considered to be a colorable device to reduce the effective turnover on which sales tax was to be charged. The STAT held against the petitioner, and in favour of the Revenue, on the issue of freight charges.

Sri S. Dwarakanath, learned counsel for the petitioner, reiterates the very same contentions as were urged, on behalf of the petitioner, before the STAT. We are in agreement with the conclusion of the STAT which has given elaborate and cogent reasons for holding against the petitioner-assessee with regards levy of tax on freight charges. We consider it unnecessary, therefore, to burden this judgment with a repetition of these reasons. The jurisdiction which this Court exercises, under Section 22 of the APGST Act, is only on questions of law, and the STAT is the final Court of fact. As no question of law arises, on the issue of levy of sales tax on freight charges, we see no reason to interfere with the order of the STAT in this regard. As this question is common to all the TRCs, and as this is the only question which arises for consideration except in TRC Nos.227 of 2009 and 56 of 2010, the other seven TRCs i.e., TRC No.134 of 2010, TRC Nos.201, 207 and 195 of 2009, and TRC Nos.131, 110 and 66 of 2010 are dismissed.

The question, regarding levy of higher sales tax on the sales turnover relating to cattle poultry feed, arises only in T.R.C. No.56 of 2010 preferred against the order of the STAT in T.A. No.102 of 2001. Before the STAT, the petitioner relied on an earlier judgment of the STAT in their own case in T.A. No.1240 of 1999 dated 06.11.2000 relating to classification of poultry feed sold by them in the name of "GOLD MOHUR" and "OK". The order of the STAT, in T.A. Nos.1240 and 1241 of 1999, related to the assessment years 1997-98 and 1998-99. In the said order, the STAT held that the items sold by the petitioner were poultry feed pure and simple; this did not attract Entry 80-A of the first Schedule; this item did not require any additional supplementary food; the food supplement needed the support of poultry feed that was supplied to domestic animals and birds as an essential ration for maintenance of their life; and the item sold by the petitioner i.e., "GOLD MOHUR" and "OK" were poultry feed, and not poultry feed supplement.

Curiously, in the order under revision, the STAT held otherwise relying on its order in T.A. No.111 of 2003 dated 14.12.2005 and T.A. No.148 of 2003 dated 06.02.2009. The STAT was of the view that, while the position was otherwise prior to the introduction of Entry 80-A in the first Schedule, the position had changed after introduction of Entry 80-A with effect from 01.08.1996; while, prior to 01.08.1996, poultry feed and poultry feed supplement could have been classified under the same head, the petitioner's products could not be placed under Entry 80 of the first Schedule thereafter; and they could not be given the benefit available to poultry feed falling under Entry 80.

If the order of the STAT, in the petitioner's own case (T.A. Nos.1240 and 1241 of 1999 dated 06.11.2000), related to an assessment period prior to the introduction of Entry 80-A of the first Schedule with effect from 01.08.1996, the STAT may have been justified in arriving at the conclusion which it had, based on the other judgments of the STAT itself. The fact, however, remains that the order of the STAT, in T.A. Nos.1240 and 1241 of 1999 dated 06.11.2000, relate to the assessment years 1997-98 and 1998-99, both of which are after introduction of Entry 80-A in the first Schedule with effect from 01.08.1996. While the STAT was entitled to take a different view from its earlier order, it could have done so only after recording reasons therefor. As the only reason given in the order under revision, for the STAT not to follow its earlier order in T.A. Nos.1240 and 1241 of 1999 dated 06.11.2000, is erroneous, the order of the STAT, in T.A. No.102 of 2001 is set-aside to this limited extent; and the matter is remanded back for its consideration afresh in accordance with law.

In T.R.C. No.227 of 2009, which is filed against the order of the STAT in T.A. No.26 of 2005, the petitioner was also denied credit for Rs.26,00,000/- paid by them as tax vide cheque No.662322 dated 06.01.1999 on the ground that they had failed to furnish the name of the bank. Sri S. Dwarakanath, learned counsel for the petitioner, would submit that the bank in question is ANZ Grindlays Bank, Raj Bhavan Road, Somajiguda, Hyderabad. He has also placed before us a photostat copy of the said cheque. While the photostat copy bears the cheque number as 662322, its date is 31.12.1998 and the amount mentioned therein is Rs.91,27,059.90ps. Learned counsel submits that the aforesaid cheque relates to three assessment years, including the assessment year 1998-99 for which T.A. No.26 of 2005 was filed. If the petitioner had, indeed paid the tax as is now claimed before us, there is no justification in denying them credit for the tax paid by them. The question whether the said cheque relates to the assessment year 1998-99, whether the said amount was credited to the account of the department etc., would, however, be required to be ascertained before the petitioner is given the benefit claimed by them. We consider it appropriate, therefore, to set-aside the order of the STAT in T.A. No.26 of 2005 to this limited extent, and remand the matter to the assessing authority directing him to ascertain whether or not tax of Rs.26,00,000/- had, in fact, been paid to the department.

Except to the limited extent, of levy of higher sales tax on the sales turnover relating to cattle poultry feed (which arises for consideration in T.R.C. No.56 of 2010 filed against the order of the STAT in T.A. No.102 of 2001), and credit of Rs.26,00,000/- (which falls for consideration in T.R.C. No.227 of 2009 filed against the order of the STAT in T.A. No.26 of 2005), all the Tax Revision Cases fail and are, accordingly, dismissed. T.A. No.102 of 2001 is remanded back to the STAT for its consideration afresh only on the issue relating to levy of higher sales tax on the sales turnover relating to cattle poultry feed. With regards short credit of Rs.26,00,000/-, which arises for consideration in T.R.C. No.227 of 2009, the matter is remanded to the assessing authority who shall, after satisfying himself that tax of Rs.26,00,000/- has, in fact, been paid by the petitioner to the department, give them credit for the tax paid by them.

Tax Revision Case Nos.195, 201 and 207 of 2009 and 66, 110, 134 and 136 of 2010 are dismissed. To the extent indicated hereinabove, Tax Revision Case Nos.227 of 2009 and 56 of 2010 are disposed of. The miscellaneous petitions, if any, pending in these petitions, shall stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 30-10-2014.
Dsh/Tsy

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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TAX REVISION CASE Nos.195, 201, 207, 227 OF 2009 AND 56, 66, 110, 134 AND 136 OF 2010

(Common Order of the Division Bench delivered by Hon'ble Sri Justice Ramesh Ranganathan)

Date.30-10-2014

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