HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

TAX REVISION CASE Nos.34 & 94 of 2002

COMMON ORDER : (Per Justice R. Subhash Reddy)

Both these Tax Revision Cases are filed under Section 22(1) of the Andhra Pradesh General Sales Tax Act, 1957, by the State of Andhra Pradesh, aggrieved by the common order dated 13.08.2001, passed by the Sales Tax Appellate Tribunal, Andhra Pradesh, Hyderabad, in Tribunal Appeal Nos.299 and 300 of 1997.

2. The respondent in both these cases is Hatcheries and is a registered dealer on the rolls of Commercial Tax Officer, Benz Circle, Vijayawada, engaged in the business of hatching and selling one-day-old chicks. The respondent has purchased poultry feed from M/s.Srinivasa Poultry and Cattle Feeds Pvt. Ltd. The Assistant Commissioner (CT), Division-II, Vijayawada, has initially inspected the business premises of respondent on 13.07.1995 and passed provisional assessment order, as against which, appeal is filed before the Appellate Deputy Commissioner (CT), Vijayawada, who has set aside the said assessment order and remanded the matter to the assessing authority for fresh consideration. Consequently, the Assistant Commissioner (CT) has once again inspected the business premises of respondent on 26.06.1996 and once again made a provisional

assessment on the purchases of poultry feed stating that the said poultry feed had not suffered tax earlier in the hands of the seller. Even against the said order, appeal is preferred before the Appellate Deputy Commissioner, who has set aside the order under appeal. The Assessing authority subsequently finalized the assessments of the respondent for the year 1995-96. The revisional authority i.e. Deputy Commissioner (CT), Division-II, Vijayawada subsequently revised the assessments, bringing to tax the poultry feed purchase turnover under Section 6-A of the APGST Act and subjected the same to tax at 4%. As against the same, matters are carried before the Sales Tax Appellate Tribunal by the respondent, and the Tribunal, by a common order dated 13.08.2001, allowed the appeals mainly on two grounds. The appellate Tribunal has held that once an appellate order is passed by the Deputy Commissioner remanding the case to the assessing authority and the assessing authority has passed the consequential order giving effect to the appellate order, the Deputy Commissioner cannot revise the said order. The Tribunal has further held that the sales effected by M/s.Srinivasa Poultry and Cattle Feeds Pvt. Ltd. are exempted by G.O.Ms.No.1055, Revenue, dated 17.10.1994 and the exemption so granted is a general exemption available at all points and the assessing authority is not correct in levying tax under Section 6-A on the turnover relating to the purchases made by the respondent herein.

3. In these revision cases, though notice is served, there is no representation on behalf of respondent.

4. When the matter is called, the learned Government Pleader appearing for petitioner has brought to the notice of this Court, an earlier judgment of this Court in the case of **State of Andhra Pradesh Vs. M/s.Venkateswara Bar & Restaurant, Nakkalagutta, Hanmakonda**[1], wherein, this Court has considered the very same question, namely, when the sale is exempted, whether the corresponding turnover could be brought to tax under Section 6-A of the APGST Act and this Court has answered the said question in negative. In view of the said judgment of this Court, we do not find any illegality in the order passed by the Tribunal.

5. So far as the jurisdictional aspect is concerned, in view of the decision on merits on the question, namely, when the sale is exempted whether the corresponding turnover could be brought under Section 6-A of the APGST Act, it is needless to go into the jurisdictional aspect, since it is of mere academic interest.

6. For the aforesaid reasons, both the tax revision cases are dismissed. Pending miscellaneous applications, if any, shall stand closed. No costs.

R. SUBHASH REDDY, J

DR. B. SIVA SANKARA RAO, J

23rd March 2015
ajr

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[1] 24 APSTJ 1