HON'BLE SRI JUSTICE R. SUBHASH REDDY
And
HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

TAX REVISION CASE Nos.78 & 144 of 2002 & 3 of 2003

COMMON ORDER : (Per Justice R.Subhash Reddy)

As all these tax revision cases are filed against the common order dated 09.07.2001, passed by the Sales Tax Appellate Tribunal, Andhra Pradesh, Hyderabad, they are heard together and are disposed of by this common order.

2. The respondent-M/s.Sukhjit Starch Mills, Nizamabad are the manufacturers of maize starch. They are assessed under the provisions of Andhra Pradesh General Sales Tax Act, 1957 (hereinafter referred to as 'the APGST Act'). The Commercial Tax Officer/assessing authority has made final assessment for the years 1992-93, 1993-94 and 1994-95 under the APGST Act and levied tax on the turnover relating to the first sales of maize gluton, maize bran, maize husk and cake at the rate of 1% as per entry 80 of I-Schedule to the APGST Act, relating to poultry feed and cattle feed. On the ground that the said products, namely, maize gluton, maize bran, maize husk and cake are unclassified goods, and hence, are liable to tax at the rate of 6% under Section 5 of the APGST Act for the aforesaid periods and levying tax at the rate of 1% by the assessing authority is irregular and

prejudicial to the Revenue, the Deputy Commissioner, Commercial Taxes, Nizamabad Division, in exercise of powers under sub-section (2) of Section 20 of the APGST Act, by separate identical orders for the three assessment years, has revised the orders passed by the assessing authority. The Deputy Commissioner, in his orders, has recorded a finding that the products referred above are unclassified goods and are used for various purposes, and hence, are liable to tax at the rate of 6%. Aggrieved by such orders made for the three assessment years of 1992-93, 1993-94 and 1994-95, respondent-assessees have challenged the same before the Sales Tax Appellate Tribunal, Andhra Pradesh, Hyderabad, and the Tribunal, by impugned common order dated 09.07.2001, has allowed the appeals by setting aside the orders passed by the Deputy Commissioner. As against the same, these tax revision cases are filed by the State.

3. It is contended by the learned Government Pleader appearing for petitioner that Entry 80 of I-Schedule to the APGST Act covers only poultry feed and cattle feed and the commodities like maize gluton, maize bran, maize husk and cake are different goods from maize. It is submitted that as these commodities are not classified in any one of the Schedules, they fall under residuary schedule i.e. VII-Schedule. In this connection, the learned Government Pleader has placed reliance on the

judgment of Hon'ble Supreme Court in the case of **M/s.A.P.Products v. State of Andhra Pradesh & others**[1].

4. On the other hand, it is contended by the learned counsel appearing for respondent that the items, namely, maize gluton, maize bran, maize husk and cake are used as poultry feed either exclusively or by mixing with other poultry feed, as such, they fall within Entry 80 of I-Schedule. It is submitted that the Deputy Commissioner, by mis-construing the Entry, has set aside the orders of assessment, but the appellate Tribunal, by considering the matter in proper perspective, has allowed the appeals. It is submitted that the disputed items are used mainly as poultry feed and they fall under Entry 80 of I-Schedule. The learned counsel, in support of his contentions, has placed reliance on the judgments of this Court in the case of **State of Andhra Pradesh v. Balaji Poultry Agencies**[2], in **Navodaya Traders v. Commissioner, Commercial Taxes, Andhra Pradesh**[3] and in **Venkateswara Chemicals v. Government of Andhra Pradesh & others**[4], on the judgment of Gujarat High Court in the case of **Glaxo Laboratories (India) Ltd. v. The State of Gujarat**[5] and on the judgment of Hon'ble Supreme Court in the case of **Annapurna**

Carbon Industries Co. v. State of Andhra Pradesh[6].

5. Having regard to the rival contentions advanced by the learned counsel for the parties, the only issue which is required to be considered is whether maize gluton, maize bran, maize husk and cake fall under Entry 80 of I-Schedule to the APGST Act or not. The I-Schedule of APGST Act relates to "Poultry feed and Cattle feed". The assessing authority has levied the tax at the rate of 1%, treating the above items as poultry feed falling under Entry 80, but the Deputy Commissioner has revised the tax by applying VII-Schedule, opining that the said goods are unclassified goods and hence are not attracted by Entry 80 of the I-Schedule. The Tribunal has allowed the appeals mainly on the ground that those items are not purchased by poultry farms. It is also held that maize cake is used mainly for the purpose of oil cake and oil is being extracted from the cake. The appellate Tribunal has held that all these items are by-products in the manufacture of maize starch from maize. By referring to the specifications notified by Indian Standard Institution publication, the appellate Tribunal has held that as per ISI standards, maize bran consists largely of the coarse and fine fibrous material obtained after separation of germ in the wet-milling manufacture of maize starch and other maize by-products and it is used as livestock feed ingredient. Further, with regard to maize oil cake, it is held

that it consists of the maize germ from which most of the oil is extracted during the manufacture of maize starch and other maize products and same is also used as a livestock feed ingredient. With regard to maize gluton, it is held that it is in the form of a thick slurry substance which is generally blended with maize bran to obtain material for feeding livestock. Thus, it is held that all these items are used for the purpose of feeding livestock. By applying the common test of normal parlance, the Tribunal has held that the above goods fall under Entry 80 of I-Schedule.

6. Having regard to the findings recorded by the appellate Tribunal and the material placed before this Court, we are of the considered view that the subject commodities fall within the purview of Entry-80 of I-Schedule. The Deputy Commissioner has reversed the orders of assessing authority mainly on the ground that these are not the items which are normally purchased by poultry farms. In the absence of specific definition of "poultry feed and cattle feed", the meaning has to be construed in common parlance, as understood commonly while using the said items. It is clear that all these items which are used either directly or by mixing with other supplements, for feeding the livestock. Further, the judgment relied on by the learned Government Pleader in the case of **M/s.A.P.Products** (1 supra), would not render any assistance in support of his case, having regard to the fact situation in these matters. In the

aforesaid judgment, the Hon'ble Supreme Court has held that the ingredients which are used in preparation of masala after grinding and mixing, lose their own identity and character and a new product separately known to the commercial world comes into existence. As such, it is held that the separate commercial commodities which emerge are separately taxable goods or entities for the purpose of sales tax. But, in the present case, the only question which falls for consideration is whether the commodities, namely, maize gluton, maize bran, maize husk and cake fall under the category of "poultry feed and cattle feed". Hence, the judgment relied on by the learned Government Pleader will not support his case.

7. In the judgment in **Balaji Poultry Agencies**' case, a Division Bench of this Court has held that Shell grit and poultry feed mineral mixture are covered by Entry 80 of I-Schedule. In the above said case, in view of certification by the A.P.Agricultural University and also A.P.State Meat and Poultry Development Corporation Ltd., certifying that the Shell grit contains minerals like calcium and phosphorous and is used as a poultry feed, has agreed with the opinion expressed by the Tribunal by dismissing the tax revision cases. Similar view is also taken by this Court in **Navodaya Traders'** case (3 supra). In the judgment rendered by a Division Bench of this Court in **Venkateswara Chemicals'** case (4 supra), while considering Entry 80-A, has held that the items included in

Entry 80-A are integral and essential constituents of poultry feed and cattle feed. It is further held that in the absence of any definition for the terms “poultry feed” and “cattle feed”, they should be understood as common man understands those items in ordinary parlance. In the judgment of Gujarat High Court in **Glaxo Laboratories**’ case (5 supra), the word “feed” is interpreted and by considering the same etymologically, it is held that the word “feed” means animal food or fodder. Further, in **Annapurna Carbon Industries’** case (6 supra), while interpreting the Entries in the Schedules, the Hon’ble Supreme Court has held that it is its general or predominant user which seems to determine the category in which an article will fall.

8. All the aforesaid judgments relied on by the learned counsel for respondent will support his case. Further, in the absence of specific definition for “poultry feed and cattle feed”, as it is in common knowledge that the items, namely, maize gluton, maize bran, maize husk and cake are used either exclusively or by mixing with other supplements as poultry feed or cattle feed, we are of the considered view that these items are covered by Entry 80 of I-Schedule to the APGST Act. Therefore, we hold that the findings recorded by the Tribunal are in conformity with law on the subject and hence, the impugned orders do not call for any interference in these revisions, in

exercise of powers under Section 22(1) of the APGST Act.

9. All the tax revision cases are accordingly dismissed. No costs.

Pending miscellaneous applications, if any, shall stand closed.

R. SUBHASH REDDY, J

Dr.B.SIVA SANKARA RAO, J

29th September 2015

ajr

[1] Appeal (Civil) Nos.6104-6106 of 2001

[2] (1991) 82 STC 353 (AP)

[3] (1996) 22 APSTJ 89 (AP)

[4] (2001) 124 STC 515 (AP)

[5] (1979) 43 STC 386 (Guj)

[6] (1976) 37 STC 378 (SC)