THE HON'BLE SRI JUSTICE K.C.BHANU

AND

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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SPECIAL APPEAL No.31 OF 2003

JUDGMENT:- (per Hon'ble Sri Justice M.Seetharama Murti)

The appellant/dealer filed this Special Appeal assailing the order dated 16.8.2002 of the Commissioner of Commercial Taxes, Andhra Pradesh, Hyderabad in CCT's Ref.L.III(3)/541/2001-2.

2. We have heard the submissions of the learned counsel for the appellant/dealer and the learned Special Government Pleader for Taxes (Andhra Pradesh). We have perused the material record.

3. The facts necessary for consideration, in brief, are as follows:

The appellant is a dealer in poultry feed. The Commercial Tax Officer (for short " the CTO"), Kurnool had finalized the assessment of the dealer for the year 1997-98 and had levied turnover tax on the total turnover, which represented the second sales of poultry feed from 01.4.1997 to 31.3.1998. Aggrieved of the said orders of the CTO, Kurnool insofar as it relates to levying of turnover tax, the dealer had filed an appeal before the Appellate Deputy Commissioner (CT), Kurnool ('the ADC' for brevity) against the said levy of turnover tax contending *inter alia* that the Government had issued G.O.Ms.No.1055 (Revenue) dated 17.10.1994, under Section 9(1) of the Andhra Pradesh General Sales Tax Act, 1957 (for short, "APGST Act") duly granting exemption on the sales of poultry feed, manufactured from out of the ingredients, which are either subjected to tax or exempted from tax under APGST Act and sold in the State with effect from 17.10.1994 and as such, the sales of poultry feed by the dealer are exempted from the turnover tax. Accepting the said contention, the ADC had allowed the appeal. The Commissioner, having examined the said order of the ADC, was of the view that it is prejudicial to the interests of the revenue of the State. Hence, the Commissioner had entertained a revision *suo motu* in exercise of powers vested in him under Section 20(1) of the APGST Act and had issued a show cause notice proposing to revise the orders of the ADC. Finally, he had passed orders, which are impugned, *inter alia* holding that the benefit of the Government Order is not extendable to the dealer, as he is not a manufacturer of poultry feed and that he is a trader in the poultry feed. Aggrieved of the said orders, the dealer had preferred the present appeal.

4. The learned counsel for the appellant/dealer had contended that the said Government Order, which is now under consideration, fell for interpretation before this Court in a decision in **Srinivasa Poultry and Cattle Feed Pvt. Ltd., Vijayawada vs. Commissioner of Commercial Taxes, Hyderabad** and that this Court had held that the said Government Order is discriminating between two categories of selling dealers and that the said notification suffers from discrimination without any reason and, hence, it is violative of Articles 301 to 304(a) of the Constitution of India and that in view of the decision of this Court in the cited case, exemption under the said Government Order is not a conditional exemption and is now a general exemption and that in view of the provisions of Sections 9(1) and 5A of the APGST Act, the order impugned confirming the orders of the assessing authority and holding that the Government Order applies only to manufacturers and not to traders is unsustainable.

5. The learned Government Pleader for Taxes, while supporting the impugned order, had *inter alia* contended that in view of the provision of Section 9 of the APGST Act and the wording employed therein, the order impugned does not suffer from infirmity and that therefore, the appeal is devoid of merit and is liable to be dismissed.

6. The first question as to whether the discrimination duly granting exemption on the sales of poultry feed manufactured from out of the ingredients which are either subjected to tax or exempted from tax under the APGST Act and sold in the State is a discrimination with reason or not is no longer *res integra* in view of the decision

relied upon by the learned counsel for the appellant. In this cited case, the poultry feed manufactured from out of the ingredients imported is subjected to tax while the poultry feed manufactured from out of the ingredients which have suffered tax in the State or which are exempt from the tax in the State is not subjected to tax. Thus, this Court noticed that the poultry feed is classified into two categories – (i) Poultry feed subjected to tax; and (ii) poultry feed not subjected to tax; depending upon the ingredients used in the manufacture of the said poultry feed. This Court had also noted that if the ingredients of the poultry feed had already suffered tax under the Act, or exempt from tax, then the poultry feed manufactured from out of the said ingredients is exempt from tax and that while in the case of poultry feed manufactured from out of the ingredients imported from other State, the same is not entitled to the benefit of the impugned notification as the said ingredients have not suffered tax under the Act or they are exempt from the payment of tax under the Act. Hence, it was pointed out to this Court that the above situation resulted in two different prices for the very same poultry feed that is to be sold in the market. This Court, in the said cited case, having held that the notification suffers from the vice of discrimination without any reason, had also considered the question as to what is the relief that can be granted to the dealer in that case, as the dealer never intended the quashing of notification, but only wanted extension of the benefit of Government Order to him as well. Therefore, this Court then considered the question as to whether such a relief of extension of benefit of the Government Order can be granted to the dealer. This Court, having followed the decision of the Supreme Court in **M/s.Anand Commercial Agencies v. C.T.O**, without quashing the Government Order, had directed to extend the benefit of the said G.O.Ms.No.1055 to the poultry feed manufactured from out of the ingredients imported from other State and had accordingly issued a writ of *mandamus.* Therefore, it follows from the ratio in the decision that the exemption under G.O.Ms.No.1055 (Revenue) dated 17.10.1994, is not a conditional exemption, but a general exemption and is to be applied without any discrimination.

7. Coming to the next question as to whether the benefit of the Government Order is extendable only to a manufacturer, and not to a trader, it is necessary to mention that we have carefully read the contents of the G.O., which runs as follows:

> ***"In exercise of the powers conferred by sub-section (1) of Section 9 of the Andhra Pradesh General Sales Tax Act, 1957 (Act VI of 1957), the Governor of Andhra Pradesh hereby exempts from the tax payable under the said Act on the sale of poultry feed manufactured out of the ingredients which are either subjected to tax or exempt from tax under the said Act and sold in the State."***

A plain reading of the G.O. makes it clear that the G.O. does not make distinction amongst the manufacturers and the traders. On the other hand, the Government Order exempts from the tax payable under the said Act on the sale of poultry feed manufactured out of the ingredients which are either subjected to tax or exempt from tax under the said Act and sold in the State. In view of the contents of the Government Order and the ratio in the decision supra, the reasoning assigned by the Commissioner and the contention that the benefit of the Government Order is only available to a manufacturer, but not to a trader, cannot be countenanced. Therefore, we see acceptable merit in the contention of the appellant/dealer. Viewed thus, we find that the appellant/dealer is entitled to the exemption claimed and that, therefore, the appeal deserves to be allowed.

8. In the result, the Special Appeal is allowed and the impugned order is set aside and the order of the Appellate Deputy Commissioner is restored. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Special Appeal shall stand closed.

JUSTICE K.C.BHANU

JUSTICE M.SEETHARAMA MURTI

Date: 26.02.2015

AMD

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