THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
And
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TAX REVISION CASE No.39 of 2015

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

This Tax Revision Case is preferred against the order passed by the Sales Tax Appellate Tribunal (for brevity, 'STAT'), Visakhapatnam in T.A.No.528 of 2005 and batch dated 09.12.2014. The respondent herein is an assessee on the rolls of Commercial Tax Officer, Rajahmundry. They were finally assessed to tax by the assessing authority for different assessment years on the sale of goods effected by them in favour of M/s Girijan Primary Cooperative Marketing Society. The respondent-claimant was exempted from payment of tax on the said turnover in view of G.O.Ms.No.800 Rev. (CT-II) Department dated 18.09.1997 whereby the Government of Andhra Pradesh exempted the tax, payable under the Andhra Pradesh General Sales Tax Act, 1957 (for brevity, 'the Act'), on the sales and purchases made by M/s Girijan Primary Cooperative Marketing Society.

The Deputy Commissioner revised the said assessment order holding that the Government had exempted only sales and purchases made by M/s Girijan Primary Cooperative Marketing Society; and sales and purchases made by
M/s Girijan Primary Cooperative Marketing Society alone were eligible for exemption, and not sale of goods by the dealers to M/s Girijan Primary Cooperative Marketing Society. Aggrieved thereby the respondent invoked the jurisdiction of the Tribunal.

In the order under revision, the Tribunal referred to a judgment of a Division Bench of this Court in
M/s Vijayalakshmi Enterprises, Vijayawada v. State of Andhra Pradesh[1] which in turn had relied on the judgment of the Supreme

Court in **Peekay Re-rolling Mills (P) Ltd v. Assistant Commissioner**[2]**.** The Tribunal also relied on an earlier judgment of this Court in **State of Andhra Pradesh v. M/s Venkateswara Bar & Restaurant, Nakkalagutta**[3] to hold that what is a sale by the vendor of the goods is a purchase in the hands of the vendee. Following the aforesaid judgments, the Tribunal held that the selling dealers, who effected sales to M/s Girijan Primary Cooperative Marketing Society, could claim exemption under the said G.O. The Tribunal, however, held that the question whether the dealers, who had sold goods to M/s Girijan Primary Cooperative Marketing Society, had collected tax was required to be ascertained. The matter was remanded to the Revisional Authority to enquire whether the respondent had charged and collected tax from M/s Girijan Primary Cooperative Marketing Society.

Before us Sri Sk.Jeelani Basha, learned Special Standing Counsel for Commercial Taxes, would place reliance on the judgment of a Division Bench of this Court in **Boppanna Arjuna Rao v. Executive Officer, Tirumala Tirupathi Devasthanam, Tirupati and others**[4] to contend that this judgment was neither noticed by the STAT nor by the Division Bench in **M/s Vijayalakshmi Enterprises**[1]**.**

In **Boppanna Arjuna Rao**[4] the question, which arose for consideration before the Division Bench, was whether the TTD was justified in effecting recovery towards sales tax at 4% from the bills payable to the petitioner in connection with the works contract entrusted to him by way of an agreement. The contention of the assessee was that such deduction, under Section 5 (4) of the Act, was contrary to G.O.Ms.No.314 dated 28.04.1988 whereby the tax payable, on the sale or purchase of goods by the TTD, was exempt from tax. The Division Bench held that a works contractor, who transfers or utilizes the material in the course of execution of a works contract, was not entitled to claim exemption as transfer of material in such cases was a deemed sale pursuant to the amendment made to the Act by A.P.Act 18 of 1985. The Division Bench further held that the said circular dated 28.04.1988 was inapplicable in the case of works contract unless the goods in question were taxable at purchase point.

Neither the present case, nor the case before the Division Bench in **M/s Vijayalakshmi Enterprises**[1], relate to works contracts. They both related to sale of goods by a registered dealer to M/s Girijan Primary Cooperative Marketing Society. The Division Bench, in **M/s Vijayalakshmi Enterprises**[1], held that a plain reading of the G.O. showed that M/s Girijan Primary Cooperative Marketing Society was exempt from payment of tax under the Act on the sales or purchases of goods made by them; and the revenue could not levy and collect tax on the sales effected by the petitioner to a buyer who is exempted from payment of purchase tax. The Division Bench relied on the judgment of the Supreme Court in **Peekay Re-rolling Mills (P) Ltd**[2] and held that there was no dispute that M/s Girijan Primary Cooperative Marketing Society was exempt from payment of sales tax as well as purchase tax; and, when the purchase of goods was exempt, sales tax could not be collected from the petitioner who was a selling dealer applying the ratio in **Peekay Re-rolling Mills (P) Ltd**[2] .

The judgment of the Division Bench in **M/s Vijayalakshmi Enterprises**[1] squarely applies to the facts of the present case. The Tribunal was, therefore, justified in relying on the said judgment, and in holding that the sale of goods by the respondent to M/s Girijan Primary Cooperative Marketing Society was exempt from tax in terms of the said G.O.

The Tribunal, in our view, rightly remanded the matter to the Revisional Authority to ascertain whether or not the respondent-dealer had collected tax from M/s Girijan Primary Cooperative Marketing Society, as collection of tax by the respondent from M/s Girijan Primary Cooperative Marketing Society, when purchase of goods by them was exempt from tax, would amount to unjust enrichment. We find no error in the order of the Tribunal necessitating interference in revision under Section 22 (1) of the Act.

The Tax Revision Case fails and is, accordingly, dismissed. Miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

02nd November, 2015.
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[1] 54 APSTJ 239
[2] (2007) 4 SCC 30
[3] 21 APSTJ 1
[4] (2001) vol.124 STC 449