

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND
THE STATE OF ANDHRA PRADESH**

T.R.E.V.C.No.55 of 2017

Between:

M/s. Bayer Crop Sciences Limited,
Door No.26-1-90, SBI Road, Nagarampalem,
Guntur – 522 004.

Registered Office:

Olympia, First floor, Central Avenue,
Hiranandani Gardens, Powai,
Mumbai-400076, Maharashtra

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Petitioner

And

State of Andhra Pradesh,
Rep. by its State Representative
Before the Andhra Pradesh Value Added Tax
Appellate Tribunal, Visakhapatnam Bench,
Visakhapatnam.

...

Respondent

JUDGMENT PRONOUNCED ON 16.11.2017

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?
2. Whether the copies of judgment may be marked to Law Reporters/Journals
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?

(C.V.NAGARJUNA REDDY,J)

(CHALLA KODANDA RAM,J)

***THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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!Counsel for the Petitioner : Mr.A.V.A.Siva Kartikeya

Counsel for the Respondent: Mr. S.Suri Babu,
Special Standing Counsel for
Commercial Taxes (AP)

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>Head Note:

?Cases referred:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

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Counsel for the Petitioner : Mr.A.V.A.Siva Kartikeya

Counsel for the Respondent: Mr.S.Suri Babu,
Special Standing Counsel for
Commercial Taxes (AP).

The Court made the following:

Order: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Revision case arises out of Order in T.A.No.18 of 2016 dated 25.10.2016 on the file of the Andhra Pradesh Value Added Tax Appellate Tribunal, Visakhapatnam (in short 'the Tribunal'). The brief facts leading to the filing of this review are, that the appellant is a registered dealer under the A.P.Value Added Tax Act, 2005 (for short 'the Act') and an assessee on the rolls of the Assistant Commissioner (CT) LTU, Guntur and is engaged in the business of selling insecticides, pesticides, herbicides, fungicides, weedicides and high quality hybrid seeds for field crops. The petitioner has purchased certain goods from the manufacturer and when the same were being transported, the vehicle was checked on 09.08.2015 at Pondugala check post. The tax invoice dated 30.07.2015, mentioned the value of the goods as Rs.39,19,649/- belonging to M/s. Saraswathi Agro Chemicals India Private Limited, whereas the excise invoice of the even date mentioned the value of the goods as Rs.71,41,050/-. On the allegation that the petitioner-dealer has violated Andhra Pradesh Value Added Tax Act and Rules, the lorry along with the goods were detained by the Assistant Commercial Tax Officer (ACTO), Border Check Post, Pondugala, Guntur district. Thereafter, a notice was issued to the petitioner, informing that in the opinion of the officer, the former has committed offence under Section 45 (2) and (7) and violated APVAT Act and Rules. On the even date, the applicant

appeared before the ACTO and got the offence compounded, to get the vehicle released. By his proceedings dated 14.08.2015, the ACTO has levied the tax on the differential value between the tax invoice and excise invoice and imposed two times of the differential tax as penalty. This order was assailed in appeal before the Appellate Deputy Commissioner (CT), Guntur Division, Guntur (for short 'the first appellate authority'). The petitioner has urged before the first appellate authority that the assessing officer has committed a serious error in treating the excise invoice as the criterion for levying the differential tax and that, imposition of penalty without a proper notice is illegal. The first appellate authority has passed his order dated 30.11.2015, wherein he has observed as under:

"I have perused the impugned order, alongside of the grounds of appeal. The Assessing Officer has not discussed the objections filed by the appellant and there is no voice in the impugned order about the objections of appellant.

In fact, the tax invoice is a criteria but not the excise invoice it is only purchase of the appellant the tax has to be levied only on the sale but not on the purchase value.

The appellant contention is also correct that the goods so being purchased, the supplier is allowing abatement on the MRP price, it is a choice and prerogative of the supplier at what rate is to be charged.

The Assessing Officer simply mentioned fictitious documents but did not place an iota of evidence to say the documents are fictitious. In fact, the appellant has filed all the documents as seen from page number 16, to 25, therefore, it is not a fictitious document and moreover dealer is a registered dealer as LTU, it at all if any doubt, he ought to have transferred the file to the concern circle office for investigation but did not do, contrary to this, keeping the vehicle for more than 4 days i.e., from 14th August, 2015 is nothing but misuse of powers vested on the assessing authorities.

This is also clear from the impugned order the Assessing Officer is not correct to levy tax on differential amount determined by taking difference of purchase tax invoice and purchase excise invoice and also basing on the above judgments and basing on arguments of the

appellant, I feel it is just and proper to levy tax on the value of the goods which can be understood as an action initiated by the authority in good faith for protection of legitimate revenue. But initiation of penalty proceeding in the same order without providing an opportunity to the appellant for filing objections is incorrect. Hence the impugned proceedings in my hand for adjudication are upheld to the extent of levy of tax and the levy of penalty is set aside and remand back to the assessing authority to pass appropriate orders afresh with proper application of law by giving opportunity to the appellant for filing objections.

Accordingly, the appeal is dismissed on the portion of the tax component and in respect of penalty the matter is remanded back to the assessing authority for fresh disposal with the above directions.

Conclusion: In the result, the appeal is ‘**partly dismissed and partly remanded**’.

2. Feeling aggrieved by the said order, the petitioner filed an appeal before the Tribunal. The Tribunal disposed of the appeal by observing that the appellant has no grievance for payment of tax and also compounding fees and that, it is questioning the penalty only. On this premise, the Tribunal directed the assessing authority to decide the aspect of penalty, taking into consideration the intensity of the alleged wrong committed by the appellant in non-certifying the e-way bill.

3. Mr.A.V.A.Siva Kartikeya, learned counsel for the petitioner submitted that the first appellate authority as well as the Tribunal has committed patent errors in disposing of the appeals. He has further submitted that the first appellate authority, having held that tax invoice is the criterion for assessment of tax and that the assessing officer has committed a serious error in detaining the goods based on

excise invoice, nevertheless confirmed the proceedings of the assessing officer as regards the imposition of tax. He has also submitted that though specific grounds have been raised, questioning the imposition of tax on the alleged differential amounts between tax invoice and excise invoice, the Tribunal has failed to consider the same on the premise that the appellant has no grievance on the imposition of tax.

4. Mr.S.Suri Babu, Special Standing Counsel for Commercial Taxes (AP), sought to sustain the orders of both the appellate authorities.

5. As could be seen from the material part of the order of the 1st appellate authority as extracted herein before, it has heavily indicted the assessing officer for taking the excise invoice, instead of tax invoice as the criterion, and he was also highly critical of the action of the detaining officer for detaining the vehicle for more than four days and termed it as misuse of powers vested in him. Having so held, the 1st appellate authority confirmed the order of the assessing officer to the extent it pertains to levy of tax. Thus, we find patent contradiction in the approach of the 1st appellate authority. The logical consequence of its observation in the paragraphs preceding the last paragraph of the order, would be to set aside the order of the assessing officer. Instead of doing so, the 1st appellate authority has,

for the reasons best known to him, proceeded to confirm the differential tax, instead of setting aside the same.

6. As regards the order of the Tribunal, ground No.5 of the memorandum of grounds of appeal before the Tribunal reads as under:

‘The appellate Deputy Commissioner (CT) has accepted the contentions of the appellant that the goods so being purchased the supplier is allowing abatement of the MRP price it is a choice and prerogative of the supplier at what is to be charged.

The appellant further submits that the Appellate Deputy Commissioner (CT) himself accepted that the tax invoices is the criteria but not the excise invoices, it is only purchase by the appellant, that tax has to be levied only on the sale but not on the purchase value.

The appellate submits that the Appellate Deputy Commissioner (CT) himself is accepting the contentions of the appellant has legally correct but upholding the levy of tax by the appellate Deputy Commissioner (CT) is not at all permissible under the law”.

7. The learned counsel for the petitioner strenuously argued that when the very purpose of filing the appeal before the Tribunal was to question the imposition of tax, there would have been no reason for the counsel to submit before the Tribunal that the petitioner has no grievance against imposition of tax. We find merit in this submission. To start with, the grievance of the petitioner before the 1st appellate authority was two fold, namely, 1). imposition of differential tax and (2) imposition of penalty. As regards the penalty, the 1st appellate authority itself has remanded the matter to the assessing officer to decide the same afresh. Therefore, there was no reason for the

petitioner to file an appeal as regards penalty. Thus, after the disposal of the appeal by the 1st appellate authority, the only grievance which still survived was imposition of tax. That being the case, it is not possible to accept the observation of the Tribunal that the petitioner had no grievance against imposition of tax.

8. Under Section 4 (3) of the Act, every VAT dealer shall pay tax taxable under Act on the sale price at the rates specified in the schedule. Evidently, keeping this provision in mind, the 1st appellate authority has held that the tax invoice which reflects the sale price, is the criterion for imposition of tax and not the excise invoice. This position in law is also not disputed by the learned Special Standing counsel. Therefore, we are of the opinion that the assessing officer has committed a manifest error in treating the price mentioned in the excise invoice as the sale price and imposing differential tax. Unfortunately, both the appellate authorities failed to correct this patent error. Accordingly, the question of law raised in ground No.12 (d) is answered in favour of the petitioner.

9. In view of our decision on this ground, there is no need to deal with ground Nos. (a) to (c).

10. All the impugned orders to the extent of imposition of differential tax on the petitioner are set aside. The appeal is accordingly allowed.

(C.V.Nagarjuna Reddy, J)

(Challa Kodanda Ram, J)

Date: 16th November, 2017

Note:

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