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

T.R.C.Nos. 146 & 151 OF 2002
And
T.R.C.No. 173 OF 2003

DATE: 09th NOVEMBER 2017

T.R.C.No. 146 OF 2002

Between:
The State of Andhra Pradesh
Rep. by the State Representative before S.T.A.T.,
Hyderabad.

… Petitioner

AND

M/s Andhra Sugars Limited.
Tanuku.

… Respondent

Counsel for the Petitioner : Sri S. Suri Babu,
Spl. Standing Counsel for
Commercial Taxes (AP)

Counsel for the respondent : Sri S. Dwarakanath

T.R.C.No. 151 OF 2002

Between:
The State of Andhra Pradesh
Rep. by the State Representative before S.T.A.T.,
Hyderabad.

… Petitioner

AND

M/s Andhra Sugars Limited.
Tanuku.

… Respondent

Counsel for the Petitioner : Sri Shaik Jeelani Basha,
Spl. Standing Counsel for
Commercial Taxes (AP)

Counsel for the respondent : Sri S. Dwarakanath

T.R.C.No. 173 OF 2002

Between:
The State of Andhra Pradesh

Rep. by the State Representative before S.T.A.T., Hyderabad.

… Petitioner

AND

M/s Andhra Sugars Limited.
Tanuku.

… Respondent

Counsel for the Petitioner : Sri S. Suri Babu,
Spl. Standing Counsel for Commercial Taxes (AP)

Counsel for the respondent : Sri S. Dwarakanath

THE COURT MADE THE FOLLOWING:

COMMON ORDER: (per Hon'ble Sri Justice C.V. Nagarjuna Reddy)

These Tax Revision Cases arise out of common order dated 31.12.2001 in T.A.Nos. 201, 202 and 725 of 1997 on the file of the Sales Tax Appellate Tribunal, Hyderabad.

The brief facts giving rise to these Revision Cases are as follows:

The respondent is a registered dealer and assessee on the rolls of CTO-I, Tanuku. Assessment of its returns for the Assessment Years 1991-92, 1992-93 and 1993-94 was finalised by the CTO (for short, 'the AO'). The AO disallowed the consignment sales of washed cotton seed oil, edible cotton seed oil, S.F. oil, S.F. crude oil, G.N. refined oil and deep oil, etc., treating the same as inter-state sales. In the process, the AO has relied upon inspection report received from the Deputy Commissioner, Enforcement, Madras, who, allegedly, conducted verification of vegetable oils from the dealers in Andhra Pradesh and his visit of certain dealers in Madras to verify the genuineness of the transactions. Questioning the said assessment, the respondent assessee filed Appeals before the Appellate Deputy Commissioner (CT), Vijayawada, who dismissed the said Appeals. Feeling aggrieved thereby, the assessee filed Appeals before the Tribunal. On appreciation of the facts and the evidence in their entirety, the Tribunal held that the sales are in the nature of consignment sales and not inter-state sales.

Heard Mr. S. Suri Babu, learned Special Standing Counsel for Commercial Taxes (Andhra Pradesh) on behalf of the petitioner in T.R.C. Nos. 146 of 2002 and 173 of 2003, Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes (Andhra Pradesh) on behalf of the petitioner in T.R.C. No. 151 of 2002 and Sri S. Dwarakanath, learned counsel for the respondent assessee.

The questions of law framed by the department in the Appeals are: 1) whether the sales of vegetable oils relate to consignment sale or inter-state sales; and 2) whether the STAT is justified in setting aside the order of the lower authority by allowing the Appeals.

In support of its conclusion that the nature of sales was consignment sales, the Tribunal has held as under:

> "We have examined, in all the documents, unloading hamali charges and postage and other expenses are collected under the Head "expenses" in the sale patties, besides Sale Patti, they have issued invoices to the purchaser at Madras. This invoice shows that the goods are delivered at the premises of Tamilnadu Edible Oils Pvt. Ltd. We have also examined the Xerox copy of the report sent by the DC, Madras. The copy is so illegible, we asked for the

original of it from the D.C. (CT), Eluru, who stated that the original investigation report in question relating to Andhra Sugars Ltd. have not been handed over to him by his predecessor nor the same has been traceable in his office. Hence, except the facts narrated in the assessment order there is no information beyond that to look into the factual aspects of the case.

After going through the case law and also the facts of the case, we have noticed that the report from CTO at Madras as narrated in the assessment order as it is and it is only a circumstantial and not based on any documentary evidence, which is a primary requisite to dispel the otherwise well established documentary evidence of the appellants like 'F' forms, sale patties, invoices, etc. The non-existence of the godowns by the commission agents and the sale to a sole dealer at Madras by itself is not sufficient to clinch the issue that it is an inter-state sale in view of the judgments rendered by different courts in different contexts. The officials at Madras also treated the agents as regular dealers and taxed oil sales in their hands. This appears to be a contradiction of facts, where on one hand they have stated that the agency transactions only a fiction and accepting the fact on the other hand that they are genuine dealers on the rolls of the department. The entire investigation did not reveal any single documentary evidence or no accounts or any of the agents to establish the privity of contract between the appellant in Andhra Pradesh to mention here the goods in the present case are standard goods, which can be utilised by anyone. In the case of Sahnery Steel & Press Works Limited & Another v. CTO & others reported in (1985) 60 STC 301, the Hon'ble Supreme Court observed that in the case of non-standard goods, if the customer places an order to the branch office and the branch office communicates the terms and specifications to their registered office, even though the dispatch billing and receiving of sale price is by the branch office, it can still be treated as inter-state sale. Here the goods are standard ones and there is no trace of communication between the buyer at Madras and the principal in Andhra Pradesh regarding dispatch of goods at any given time."

In conclusion, the Tribunal held as under:

> " In the present case on hand, after going through the order, no independent enquiry was conducted by the department. They relied on only enquiry report of third person, which is also incomplete and insufficient to disallow the claim of the appellant. In the reports given by the various agents, except stating the fact that there is no godown, the other report is not in favour of Revenue. In their report, they have stated that if the quality of oil is inferior, it will be rejected and the oil is transferred to Tamilnadu Edible Oils Pvt. Ltd. only if it satisfies the quality test at found from page 11 of the Xerox copy produced before us. The party will accept the oil subject to approval report. This shows the fact that the entire stock consigned from AP is sold to the dealers at Madras subject to their approval. This observation supports the contention of the learned AR for the appellants. In the circumstances, the orders of lower authorities levying Central Sales Tax on the value of oils sent to the consignment agents in Tamilnadu are unsustainable. Accordingly, the orders of lower authorities are set aside and the appeals are allowed."

In our opinion, both the questions raised by the revenue fall in the realm of questions of fact. Therefore, they do not give rise to any question of law, much less substantial questions of law. As noted hereinbefore, the Tribunal, on appreciation of the entire evidence on record, concluded that the sales of vegetable and other oils related to consignment sale and not inter-state sales. No ground is raised by the petitioner to the effect that in the process of considering the facts and appreciation of evidence, the approach of the Tribunal is perverse.

In the light of the above, we do not find any reason to interfere with the order of the Tribunal, which, as noted above, falls within the realm of findings of fact.

The Revision Petitions are accordingly, dismissed. No costs.

C.V. NAGARJUNA REDDY, J

CHALLA KODANDA RAM, J

07th November 2017

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