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

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

TAX REVISION CASE No.56 of 2017

23.11.2017

Between:

The State of Andhra Pradesh, Hyderabad

..Petitioner

And

M/s.Janaki Feeds Pvt. Ltd., Karimnagar

..Respondent

Counsel for the petitioner: Mr.M.Govind Reddy, special standing counsel for Commercial Taxes

Counsel for the respondent: Mr.M.V.J.K.Kumar

The Court made the following:

<u>ORDER</u>: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Tax Revision Case arises out of order, dated 05.01.2010, in T.A.No.154 of 2005 on the file of the Sales Tax Appellate Tribunal, Andhra Pradesh, Hyderabad (for short 'the Tribunal').

2. The Assessing Officer levied tax on the poultry feed manufactured by the respondent-assessee from the ingredients purchased by it from outside the State for the assessment year 1996-97. The assessee filed appeal before the Appellate Deputy Commissioner, C.T., Warangal (for short 'the Appellate Authority') claiming the benefit of exemption granted *vide* G.O.Ms.No.1055, Revenue, dated 17.10.1994. Following the judgment of this Court in **M/s.Srinivasa Poultry and Cattle Feed (P) Limited, Vijayawada vs. CCT**[1], the Appellate Authority allowed the appeal, *vide* his order, dated 20.06.2000. The Additional Commissioner (C.T.) (Legal) (F.A.C.), Office of the Commissioner of Commercial Taxes, Andhra Pradesh, Hyderabad (for short 'the Revisional Authority') exercised *suo motu* revisional power and by his order, dated 05.06.2004, set aside the order of the Appellate Authority. The main reason for the Revisional Authority to set aside the order of the Appellate Authority was that as the assessee has not charged the sales tax separately and has also not maintained the separate sale account for the sales of poultry feed manufactured from the ingredients purchased from outside the State, the tax component got embedded in the sale price charged from the customers, and that therefore, the said fact leads to the assessee collecting tax from the

[1] APSTJ (1999) Volume 29 page 71

customers. Feeling aggrieved by the order of the Revisional Authority, the assessee has filed T.A.No.154 of 2005 before the Tribunal. The assessee has pleaded before the Tribunal that adequate opportunity for submitting objections was not afforded to it by the Revisional Authority and that the conclusions drawn by the Revisional Authority that the assessee has collected tax from its customers is contrary to the record. While rejecting the first mentioned plea of the assessee, the Tribunal has, however, by its order, dated 05.01.2010, allowed the appeal on the ground that nowhere the orders of the Assessing Officer, the Appellate Authority or the Revisional Authority revealed the fact of collection of tax from the customers by the assessee and that it has not been held by any of these Authorities that the sales tax has been indicated in the sale bills. The Tribunal has, accordingly, come to the conclusion that presumption of levy of tax drawn by the Revisional Authority is incorrect.

3. Ordinarily, when refund of tax is involved, the State is bound to return the same unless the tax burden has already been passed on by the assessee to its customers. In such event, the assessee will be held not entitled for refund by applying the Doctrine of unjust enrichment. (See **Mafatlal Industries Ltd., vs. Union of India**[2]). When a question arises as to whether the assessee has collected tax or not, Section 33 BB of the Andhra Pradesh General Sales Tax Act, 1957 places the burden on the assessee to prove to the satisfaction of the Assessing Authority that he has not collected the tax from the customers. While the

[2] 1998 STC Volume 111 page 467 (S.C.)

Revisional Authority has applied the presumption underlying the said provision, the Tribunal has allowed the appeal on the ground that the fact of collection of tax from the customers by the assessee was not established by any of the lower Authorities. In our opinion, the Tribunal has wrongly placed the burden on the Revenue instead on the assessee. When the burden is to prove that the assessee has not collected the tax from the customers, it for the assessee to produce necessary documents to discharge this burden. Indeed, it was the grievance of the assessee that adequate opportunity to discharge this burden was not given to it by the Revisional Authority. Even the Revisional Authority, in its order, has stated that the assessee has received show cause notice on 06.05.2004, but the latter has sent a telegram on 19.05.2004 seeking one month time for filing objections and that the said request for granting time was rejected on the ground that the revision was getting time barred by 19.06.2004. This finding itself proves that there was no opportunity for the assessee to discharge the burden placed on it to establish that it has not collected the tax from the customers. In our opinion, while setting aside the order of the Revisional Authority, the Tribunal has committed a serious error in not remanding the case to the Revisional Authority for fresh consideration, after giving the assessee an opportunity of submitting the proof that it has not collected the tax from the customers.

4. For the aforementioned reasons, the order under appeal and the order of the Revisional Authority are set aside. The case is remanded to the Revisional Authority. Within one month from the date of receipt of

a copy of this order, the respondent-assessee shall produce the documentary proof, such as bills, invoices etc., showing that it has not collected the tax from the customers. Thereafter, the Revisional Authority shall, after giving the assessee an opportunity of personal hearing, pass a fresh order. Needless to observe that if the assessee fails to produce any such proof within the above stipulated time, the Revisional Authority shall be free to pass a fresh order based on the available record. The Tax Revision Case is, accordingly, allowed.

C.V.NAGARJUNA REDDY, J

T.AMARNATH GOUD, J

23rd November, 2017
GHN