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

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

TAX REVISION CASE No.9 of 2017

04.01.2018

Between:

M/s.Radha Tea Company, Vijayawada

..Petitioner

and

The State of Andhra Pradesh

..Respondent

Counsel for the petitioner: Mr.P.Vijay Hindhu
for Mr.M.V.J.K.Kumar

Counsel for the respondent: Mr.Shaik Jeelani Basha,
special standing counsel for Commercial Taxes (A.P.)

The Court made the following:

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

Feeling aggrieved by order, dated 31.03.2016, in T.A.No.1113 of 2005 on the file of the Andhra Pradesh Value Added Tax Appellate Tribunal, Visakhapatnam (for short 'the Tribunal'), the unsuccessful appellant before it filed this appeal.

2. We have heard Mr.P.Vijay Hindhu, learned counsel representing Mr.M.V.J.K.Kumar, learned counsel for the petitioner, and Mr.Shaik Jeelani Basha, learned special standing counsel for Commercial Taxes (A.P.) appearing for the respondent.

3. The petitioner is a dealer in tea powder. For the assessment year 2001-2002, it submitted its returns, based on which, the Commercial Tax Officer, Suryaraopet Circle, Vijayawada (for short 'the Assessing Officer'), assessed the turnover tax. However, noticing certain abnormalities, the Deputy Commissioner (Commercial Taxes) No.II Division, Vijayawada (for short 'Revisional Authority'), proposed revision of tax and issued a show cause with regard thereto. In reply to the said show cause notice, the petitioner submitted its objections. The Revisional Authority also afforded the opportunity of personal hearing to the petitioner and thereafter, he passed order, dated 13.08.2004, revising the assessment made by the Assessing Officer, by adding the short turnover to be assessed as the first sales. Assailing the said order, the petitioner filed T.A.No.1113 of 2005 before the Tribunal. By the order under revision, the Tribunal has confirmed the order of the Revisional Authority.

4. At the hearing, the only submission made by the learned counsel appearing for the petitioner is that his client specifically pleaded before the Revisional Authority that some of its stocks lost its flavour in view of storage for long period and hence, it was forced to sell the stocks for loss and that therefore, the alleged abnormality in the profit ratio between the first and second sales is not correct. A perusal of the order of the Revisional Authority shows that the said plea was considered in detail and was rejected by assigning the following reasons.

> "It is true that a dealer under certain circumstances would sell his goods for a loss. But he should be able to prove that conclusively with documentary evidence. In the present case the dealer argues that he sold some of his old stock for a price lesser than purchasing price. But he failed to furnish a statement showing individual invoice price and the corresponding purchase price of the stocks on which he had incurred loss. In the absence of such proof the contention of the dealer cannot be accepted."

The Revisional Authority also discussed in detail, the error committed by the Assessing Officer in accepting the returns of the assessee as under.

> "With regard to second sales in which the dealer has disclosed sales of Rs.63,39,700/- for a net purchase value of Rs.30,31,428/-, the dealer states that out of total second sales of Rs.63,39,700/- an amount of Rs.48,37,410/- represents deemed first sales turnover taxable under Sec.5AA stated that since he had disclosed a deemed first sales turnover of Rs.48,37,410/-, it is but nature that the total second sales turnover including deemed first sales turnover is much greater than the net purchase value. This contention of the dealer is also examined carefully the assessment order the assessing officer assessed a turnover of Rs.48,37,410/- as deemed first sales under Sec.5AA. But the assessing officer in the same breath determined the net purchase value corresponding to

the deemed first sales as Rs.46,73,000/-. The assessing officer also worked out the tax payable on the deemed first sales as Rs.4,83,741/- and the tax paid on the corresponding purchase value as Rs.4,67,300/- and finally determined the net tax payable by the dealer that while the trading account shows that the total net purchase value of the local purchases is Rs.30,31,428/-, the assessing officer in his order determined that the net purchase value of the local purchases relating to deemed first sales is Rs.46,73,000/-. It is not known how the assessing officer arrived at this value. Even accepting that the total second sales of the dealer of Rs.63,39,700/- comprising Rs.48,37,410/- deemed first sales and Rs.15,02,290/- normal second sales, the deduction on the net purchase value corresponding to the deemed first sales should be estimated as Rs.17,55,165/- (as worked out at the end of this order) out of the total net purchase value of the dealer of Rs.30,31,428/- and not Rs.46,73,000/- determined by the commercial tax officer."

In the appeal, the Tribunal has fully concurred with the view of the Revisional Authority.

5. As the findings of the Revisional Authority as well as the Tribunal are based on appreciation of facts and the material on record, no substantial question of law arises for consideration in this revision case. Accordingly, all the questions raised by the petitioner are answered against it.

6. The Tax Revision Case is, accordingly, dismissed.

C.V.NAGARJUNA REDDY, J

T.AMARNATH GOUD, J

04th January, 2018
GHN