

A M/S. SHAKTHI SEEDS PVT. LTD.
v.
DY. COMMNR. (CT) AND ANR.

MAY 30, 2007

B [DR. ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

Sales Tax:

C *Andhra Pradesh General Sales Tax Act, 1957—GOMs No. 604 Rev(s) dated 9.4.1981—Exemption under—Requirement for—Held: Claimant required to prove that seeds in question are either certified seeds or truthfully labelled—Clarificatory Memorandum dated 26.4.1994.*

D Appellant-assessee is a registered dealer in agricultural seeds, chillies, paddy and other crops. The Commercial Tax Officer passed assessment orders in respect of turnovers granting benefit of G.O.Ms. No. 604 Rev(s) dated 9.4.1981 and G.O.Ms. No. 129 Rev. (CT II) dated 14.2.1989 issued under Andhra Pradesh General Sales Tax Act, 1957.

E The Deputy Commissioner revised the assessment order and proposed tax on those items as the appellant effected purchase from unregistered dealers and are liable to tax as first purchasers within the State of Andhra Pradesh.

F On appeal, Tribunal held that in order to claim exemption in terms of G.O.Ms. No 604 dated 9.4.1981, the claimant is required to establish and prove that the seeds in question are certified seeds as well as truthfully labelled seeds and that the appellant-dealer has failed to adduce any satisfactory material and evidence to establish these two conditions for grant of exemption. High Court affirmed the order of Tribunal. Hence the present appeal.

G Allowing the appeal, the Court

HELD: 1. The Tribunal proceeded on the basis that the seeds were required to be certified and truthfully labelled for the purpose of eligibility for exemption. The Clarification Memorandum dated 26.4.1994 clarified that

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two alternatives are available i.e. either certified or truthfully labelled. The High Court also overlooked the clarificatory memorandum. In the circumstances, it would be appropriate for the Tribunal to examine the factual aspect, keeping in view the clarificatory memorandum providing alternatives. The parties shall be free to lead fresh evidence. The appellant shall produce evidence to show that the seeds were truthfully labelled. It cannot be said that the authorities cannot require the dealer to satisfy the requirement that the seeds were truthfully labelled. There is no such blanket protection. In order to be satisfied about the acceptability of the claim, they can require the assessee to justify the claim and that it is entitled to the exemption.

[Para 11, 13, 14 and 15] [849-A, C, D, E]

Gururaj Seeds (P) Ltd. v. State of Andhra Pradesh and Ors., 18 APSTJ 46, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4649 of 2002.

From the Final Judgment and Order dated 10.09.2001 of the High Court of Judicature of Andhra Pradesh at Hyderabad in Tax Revision Case No. 156 of 2001.

Kunal Verma, M. Mannan, C.S.N. Mohan Rao, Arjun Garg and R. Shrivastava for the Appellant.

Manoj Saxena, Rajnish K. Singh, Raul Shukla and T.V. George for the Respondents.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a Division Bench of the Andhra Pradesh High Court dismissing the Revision Petition filed by the appellant under Section 22(1) of the Andhra Pradesh General Sales Tax Act, 1957 (in short the 'Act'). Before the High Court challenge was to the order passed by the Sales Tax Appellate Tribunal, Andhra Pradesh (in short the 'Tribunal').

2. Background facts in a nutshell are as follows:

M/s. Shakthi Seeds (P) Ltd., the appellant herein, is a private limited company and they are dealers in agricultural seeds, chillies, paddy, sun-flower and other crops. It is an assessee and a registered dealer under the Act. The Commercial Tax Officer, Hyderguda Circle, Hyderabad, framed final assessment

A orders in respect of the turnovers for the assessment year 1992-93 granting benefit of G.O.Ms. No. 604, Rev (S), dated 9.4.1981 and G.O.Ms. No. 129 Rev(CT II), dated 14.2.1989. However, the Deputy Commissioner (CT), Abids Division, Hyderabad, on scrutiny of the assessment finalised by the Commercial Tax Officer vide his proceedings dated 16.12.1993 noticed that the appellant after purchasing chillies, paddy and sun-flower from unregistered dealers, sold those goods as "certified and truthfully labelled seeds" and on that basis claimed exemption in terms of G.O.No. 604 Revenue (S), dated 9.4.1981. He, therefore, proceeded to revise the assessment order and proposed tax on those items as the appellant effected purchase from unregistered dealers and therefore they are liable to tax as first purchasers within the State of Andhra Pradesh. Before the Deputy Commissioner (CT), the appellant contended that they are entitled to exemption in terms of G.O.Ms. No 604 dated 9.4.1981 treating the seeds as truthfully labelled and certified seeds. In support of their contention, they have also placed reliance on the decision in the case of *Gururaj Seeds (P) Ltd., v. State of Andhra Pradesh & Ors.*, (18 APSTJ 46). The Deputy Commissioner (CT), disallowed the claim of the appellant and revised the assessment order framed by the Commercial Tax Officer, Hyderguda, Hyderabad. Then the matter was carried before the Tribunal by the appellant. The Tribunal opining that in order to claim exemption in terms of G.O.Ms. No 604 dated 9.4.1981, the claimant should establish and prove that the seeds in question are certified seeds as well as truthfully labelled seeds and that the appellant-dealer has failed to adduce any satisfactory material and evidence to establish these two conditions for grant of exemption in terms of G.O.Ms. No. 604, dismissed the appeal by its order dated 13.3.2000. The order of the Tribunal was challenged before the High Court by a revision petition on the ground that view taken by the Tribunal that both the conditions should co-exist for getting exemption under G.O.Ms. No. 604 is on a misreading of the G.O.Ms. Tribunal's view completely ignores the clarification issued by the Government vide its Memorandum No. 13630/CT-II(2)/89-19, dated 26.4.1994. By the said office Memorandum, the Government had directed the Commercial Tax Departmental Authorities to note that both the certified seeds and/or truthfully labelled seeds are entitled for exemption from tax in terms of G.O.Ms. No. 604 dated 9.4.1981. In that context, it was submitted that the department could not have required the appellant-dealer to produce evidence as regards accuracy or veracity of the declaration regarding the labelling.

H 3. In support of the appeal, learned counsel for the appellant reiterated its stand before the High Court.

4. Learned counsel for the respondent on the other hand supported the findings of the authorities, Tribunal and the High Court. A

5. The reasoning of the Tribunal related to certified and truthfully labelled seeds reads as follows:

"Regarding treatment with fungicides, it has to be stated that not all fungicides treated are certified and truthfully labelled seeds. Because, even ordinary and high quality pure seeds are also treated with fungicides by some persons to prevent loss of seeds and future seedlings from such seeds because of the fungal infection of the said seeds of the seeding purpose. Besides there is prohibition to use the said treated seeds for edible purpose also after certain periods after which there is no residual effect of such fungicides." B C

6. In reply to the show cause notice issued the appellant had clarified its stand as follows:

"In this regard, we would like to bring to your kind notice, that we have purchased processed chilli seed, Paddy seed and Sunflower seed from farmers, and not chillies, paddy or sunflower commodities. The above cited seeds namely Chillis seed, paddy seed and Sunflower seed have been processed, treated with fungicides and packed by us using packing material and sold under our brand name of "Shakthi" as truthfully labelled seeds. Moreover the said seeds were meant for agricultural purpose only and not for food, feed or oil purpose, since they were treated with fungicides. All seeds are first purchased only from the farmers who are unregistered dealers." D E

7. There was no consideration of these aspects as apparently the High Court has lost sight of the substance of the clarification. F

8. The G.O.Ms. No. 604 dated 9.4.1981 reads as follows:

"In exercise of powers conferred by sub-section (1) of Section 9 of the Andhra Pradesh General Sales Tax Act, 1957 (A.P. Act 6 of 1957) the Governor of Andhra Pradesh hereby exempts from the Tax payable under the said Act the sales or purchases of all varieties of certified and truthfully labelled seeds for agricultural purposes." G

Sales of certified and truthfully labelled seeds in the course of inter-State trade of Commerce Exemption from CST". H

A 9. The Clarification Memorandum No. 13630/CT-II(2)/89-19 dated 26.4.1994 reads as follows:

B "In the G.O.Ms. No. 604 Revenue (s) Department dated 9.4.81, the Government issued orders exempting from the tax payable under the A.P.G.S.T. Act the Sales or Purchases of all varieties of certified and truthfully labelled seeds for agricultural purposes. In the G.O. second read above, a similar order was issued under the C.S.T. Act in respect of the above goods sold in the course of inter-state trade also.

C The A.P. Seed Growers Merchants and Nurserymen Association, Hyderabad, National Seeds Corporation, New Delhi and Peddiredy Thimmareddy Farm Foundation, Hyderabad have now represented to the Government that even though the exemption granted in the above G.Os. are applicable to both the categories of seeds viz. certified seeds and or truthfully labelled seeds some of the assessing authorities are insisting that the seeds should be certified as well as truthfully labelled to become eligible for grant of exemption. Hence they requested the Government to issue clarification in the matter to remove the ambiguity.

D The Government has examined the matter in consultation with the Agriculture and Co-operation Department and they hereby clarify that both "certified seeds and/or truthfully labelled seeds" are exempt from tax as per the orders issued in G.O.Ms. No. 604 Revenue (s) Department dated 9.4.81 and G.O.Ms. No. 129 Revenue (CT-II) Department dated 14.2.89 as they are two types of seeds sold for Agricultural purposes."

E 10. Rule 7 of the Seeds Rules, 1968 (in short the 'Rules') reads as follows:

F "Rule 7. Responsibility for marking or labelling - When seed of a notified kind or variety is offered for sale under Sec.7 each container shall be marked or labelled in the manner hereinafter specified. The person whose name appears on the mark or label shall be responsible for the accuracy of the information required to appear on the mark or label so long as seed is contained in the unopened original container:

G Provided, however, that such person shall not be responsible for the accuracy of the statement appearing on the mark or label if the seed is removed from the original unopened container, or he shall not be responsible for the accuracy of the germination statement beyond the

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date of validity indicated on the mark or label".

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11. The Clarification Memorandum dated 26.4.1994 clarified that two alternatives are available i.e. either certified or truthfully labelled. 'Certified seeds' is defined in Section 9 of the Seeds Act, 1966 (in short the 'Seeds Act'). Reference in this context also may be made to the Rule 2(e) of the Rules dealing with certified seeds.

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12. Learned counsel for the appellant conceded that there was no claim by the appellant about sale of certified seeds. Rule 7 deals with marking or labelling.

13. It appears that Tribunal proceeded on the basis that the seeds were required to be certified and truthfully labelled for the purpose of eligibility for exemption. In reality, as clearly stated in the clarificatory memorandum they are alternatives.

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14. The High Court also proceeded on the same basis overlooking the clarificatory memorandum

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15. In the circumstances, it would be appropriate for the Tribunal to examine the factual aspect, keeping in view the clarificatory memorandum providing alternatives. The parties shall be free to lead fresh evidence. The appellant shall produce evidence to show that the seeds were truthfully labelled. It cannot be said that the authorities cannot require the dealer to satisfy the requirement that the seeds were truthfully labelled. There is no such blanket protection. In order to be satisfied about the acceptability of the claim, they can require the assessee to justify the claim and that it is entitled to the exemption.

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16. The appeal is accordingly allowed with no orders as to costs.

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D.G.

Appeal allowed.