

APHC010562322008



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3488]

WEDNESDAY, THE SIXTEENTH DAY OF OCTOBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE HARINATH.N

WRIT PETITION Nos.20089, 20132, 20133, 20139, 20150 & 20162 of 2008

Between:

M/s. Matangi Traders, E.g. Dist.

...PETITIONER

AND

The Joint Commr Ct

...RESPONDENT

Counsel for the Petitioner:

1. VEDULA SRINIVAS

Counsel for the Respondent:

1. GP FOR COMMERCIAL TAX

The Court made the following Common Order: *(per Hon'ble Sri Justice R. Raghunandan Rao)*

As the issues raised in all these Writ Petitions are one and the same and they are being disposed of by way of this Common Order.

2. In all these cases, the petitioners are dealers dealing with Sodium Bicarbonate (Soda Ash) and Magnesium Sulphate (Epsom Salt).

3. All the petitioners, while being assessed under the Andhra Pradesh Goods and Services Tax Act, 2017 [for short "the APGST Act"] had

claimed that the rate of tax payable on the sale of these goods would be 8% on the basis of G.O.Ms.No.189, dated 07.02.2005.

4. This contention was partly accepted by the Assessing Officer. However, some of these goods were sought to tax @12% on the ground that they are not covered under G.O.Ms.No.189, dated 07.02.2005. Aggrieved by the said Orders of Assessment, the petitioners had filed appeals against their respective Assessment Orders. The Appellate Deputy Commissioner (CT), Visakhapatnam accepted the contentions of the petitioners and allowed the appeals. Consequent to the said Orders, the Assessing Officers had revised their Assessment Orders.

5. At that stage, the Revisional Authority revised the Orders in appeal and, after hearing the petitioners, had held against the petitioners and directed payment of tax @12% on the sale of these goods.

6. Aggrieved by the said Orders of revision which are all dated 22.08.2008, the petitioners have approached this Court by way of the present set of Writ Petitions.

7. Smt. Priyanvitha, learned counsel appearing on behalf of Sri Vedula Srinivas, learned counsel for the petitioners would submit that the Revisional Order proceeded on the ground that the goods in question were used as raw material for manufacture of other goods and as such, they cannot be treated as chemicals. She would submit that the goods would not lose their character of chemicals merely because they were used as raw material in manufacture of other goods and the finding of the Revisional Authority that the

nature of the goods would change from chemicals to other goods which do not fall within the purview of G.O.Ms.No.189, dated 07.02.2005 is not based on any logic or provision of law. She would also rely upon the Judgment of a Division Bench of the erstwhile High Court of Judicature, Andhra Pradesh at Hyderabad, dated 07.06.2007, in W.P.No.87 of 2007.

8. The learned Government Pleader for Commercial Tax, on the other hand, would submit that the goods in question cannot be treated as chemicals merely because they can also be called by their chemical names. He would submit that the Revisional Authority after looking at the purpose for which the goods were purchased in the market had held that these should be treated as raw materials and not chemicals. He would further submit that there is no infirmity in the said reasoning and the Order of Revisional Authority ought to be upheld.

9. G.O.Ms.No.189, dated 07.02.2005 reads as follows:-

"LEVY OF TAX ON THE SALE OF ALL CHEMICALS BESIDES CALCIUM CARBIDE @ 8% UPTO 30-09-2004-REVISED NOTIFICATION.

[G.O.Ms.No. 189. Revenue, (CT. II), 7th February, 2005.1

In exercise of the powers conferred by Sub-section (1) of Section 9 of the Andhra Pradesh General Sales Tax Act, 1957 (Act No. VI of 1957), and in partial modification of the orders issued in G.O.Ms.No.1021, Revenue, Dated 13-12-2004, the Governor of Andhra Pradesh hereby directs that the rate of tax on the sale of 'All Chemicals' besides 'Calcium Carbide', which are not covered under Entry (9) of Dyes and Chemicals, in the State, shall be at eight paise in the rupee, upto 30-09-2004 only, under the said Act.

N. S. HARIHARAN,
Special Chief Secretary to Government."

10. This G.O. directs a levy of sale tax @8% on all chemicals which are not covered under Entry-9 which is headed as dyes and chemicals. A perusal of Entry-9 would show that the goods mentioned above are not

enumerated in Entry-9. In a similar situation, a Division Bench of erstwhile High Court of Judicature, Andhra Pradesh at Hyderabad while dealing with the product Sodium Hydro Sulphite had, in the Judgment mentioned above, held that any chemical which is not enumerated in Entry-9 of VI Schedule would fall within the ambit of G.O.Ms.No.189, dated 07.02.2005 and would be taxable @8% only.

11. In view of the above Judgment, it would have to be held that all the goods in question would have to be taxed only @8% as they are chemicals and the usage of these chemicals as raw materials would not detract from the categorisation of these goods as chemicals.

12. Accordingly, these Writ Petitions are allowed setting aside the Revision Orders of the Joint Commissioner (CT) (Legal), Office of the Commissioner of Commercial Taxes, A.P, Hyderabad dated 22.08.2008. There shall be no order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

R. RAGHUNANDAN RAO, J.

HARINATH.N, J.

BSM

HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

AND

HONOURABLE SRI JUSTICE HARINATH.N

WRIT PETITION Nos.20089, 20132, 20133, 20139, 20150 & 20162 of 2008

(per Hon'ble Sri Justice R. Raghunandan Rao)

Date: 16.10.2024

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