

PETITIONER:
SRI VENKATESWARA RICE, GINNING & GROUNDNUTOIL MILL CONTRACTO

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH & ORS.

DATE OF JUDGMENT 23/08/1971

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
GROVER, A.N.

CITATION:
1972 AIR 51 1972 SCR (1) 346
1971 SCC (2) 630
CITATOR INFO :
F 1972 SC2227 (4)

ACT:
Andhra Pradesh General Sales Tax Act, 1956, Sch. III, item 6, and Central Sales Tax Act (74 of 1956), ss. 14 and 15- Purchase of groundnut by millers-Used for extracting oil and re-sale-Liability to purchase tax.
Practice and Procedure-Division Bench of High Court ignoring earlier decision of another Division Bench-Propriety.

HEADNOTE:
Under ss. 14 and 15 of the Central Sales Tax Act, 1956, groundnut is one of the declared goods' and a State is not empowered to levy purchase tax of more than 3% on the turnover, and further the tax cannot be levied at more than one stage. Under s. 6 of the Andhra Pradesh General Sales Tax Act, 1956, the sales or purchases of 'declared good,&' by a dealer shall be liable to tax at the rate, and at the point of sale or purchase specified in the III Schedule to the Act. Item 6 of the III Schedule provides, that with respect to groundnut, the point of levy is, when purchased by a miller other than a decorticating miller in the State, at the point of purchase by such miller, and in all other cases, at the point of purchase by the last dealer who buys in the State.

The assessees were millers but not decorticating millers and they were registered dealers under the Act. Groundnut was purchased by them not for sale, but was either used by them entirely for extracting oil or partly for extracting oil and the rest sold to others.

On the question whether the event that gave rise to tax liability was (a) the purchase by the assessees, or (b) the crushing of the groundnut purchased by the assessees, or (c) the last purchase by a purchaser in the State, the High Court, in revision, held that the purchase tax should be levied when the assessees purchased the groundnut.

Dismissing the appeals to this Court,
HELD : (1) Under the sales-tax laws the charge in respect of a sale or purchase becomes effective as soon as the sale in the case of sales-tax and purchase in the case of purchase-tax is made, though, the liability of the dealer is computed only at the end of the year., Hence, the turnover relating

to the purchases, in the present case, became charged with the liability to pay tax as soon as those purchases were made by the assessee-millers. That is to say, as soon as a first miller purchased groundnut, the turnover relating to that purchase-any question of exemption apart became liable to tax. [348 H; 349 A-C]

(2) This interpretation would not make subsequent purchases by other millers of the same groundnut eligible to tax, because, in view of ss. 14 and 15 of the General Sales Tax Act and s. 6 of Andhra Pradesh Act, purchase of groundnut can be taxed only at one stage. Once a particular quantity of groundnut has been subjected to tax the State's power in respect of those goods is exhausted. [349 D-E]

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(3) The language of item 6 of the III Schedule shows that it is only the first purchase that becomes exigible to tax. Therefore, there was no need, for the Legislature to say 'when purchased by the first miller' and the interpretation does not involve the adding of any word into that item. [349 E-F]

(4) The event which attracted the tax in the present case is the purchase of groundnut by an assessee and not his act of crushing the groundnut purchased or dealing with the groundnut in any other manner, because, his subsequent dealings in those goods is irrelevant. Hence, it could not be said that the assessee should be taxed only in respect of that part of the turnover which related to groundnut crushed for extracting oil; and that with respect to the remaining part it was the last dealer who purchased it, that should be taxed. [349 G-H]

(5) A Division Bench of a High Court is bound by an earlier decision of a co-ordinate Bench of the same High Court. If the Judges felt that the earlier decision should be reconsidered they should have referred the question to a larger Bench and should not have ignored the earlier decision. [350 C-D]

M. Madar Khan & Co. v. Assistant Commissioner (Commercial Taxes) Anantpur, 27 S.T.C. 18, overruled.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1809 to 1812 of 1968.

Appeals from the judgment and order dated April 20, 1967 of the Andhra Pradesh High Court in T.R.C. Nos. 48, 43, 49 and 74 of 1966.

M. C. Chagla, C. A. Kanyaka Prasad, R. Gopalakrishnan and D. P., Mahanty, for the appellants (in all the appeals).
P. Ram Reddy and G. S. Rama Rao, for the respondents (in all the appeals).

The Judgment of the Court was delivered by Hegde, J. In these appeals by certificate a common question of law arises for decision viz., on the facts and circumstances of, these cases what is the point of levy of purchase tax in respect of certain transactions relating to purchase of, ground nut or groundnut kernel by the assessee-appellants under the Andhra Pradesh General Sales Tax Act, 1956 in brief 'the Act'?

The Commercial Tax Officer came to the conclusion that a critical event took place when the assessee purchased the groundnut with which we are concerned in these appeals. In appeal the Assistant Commissioner upheld the order of the Commercial Tax Officer. On a further appeal by the assessee, the Sales Tax Appellate Tribunal disagreeing with

the conclusion reached by the. Commercial Tax Officer as well as the Assistant Commissioner came to the conclusion that the turnovers relating to the purchases of groundnut in question became exigible to tax either when the groundnut purchased was crushed by the millers or when the

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same was purchased by the last purchasers. But when the matter was taken up in revision to the High Court, the High Court reversed the decision of the Tribunal and restored the order of the Commercial Tax Officer.

In all these appeals, the assessees are admittedly millers. They are registered dealers under the Act. The groundnut purchased by them was either entirely used by them for extracting oil or partly used for extracting oil and partly sold to others. The levy with which we are concerned in these appeals in purchase tax. The question for decision, as mentioned earlier, is which were the events that gave rise to tax liability-first purchase', the crushing, of the groundnut purchased or the 'last purchase' ?

The Ground is one of the "declared goods" (to be of special importance in inter-state trade or commerce under S. 14 of the Central Sales Tax Act, 1956, and therefore in view of S. 15(a) of that Act, the State is not empowered to levy purchase tax of more than three percent on the turnover in respect of those purchases and further the tax cannot be levied at more than one stage. Herein we are not concerned with inter-state sales or purchases.

Now turning to the Act, S. 2(f) defines "declared goods" as meaning goods declared under S. 14 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) to be of special importance in inter-state trade or commerce. In compliance with the mandate of ss. 14 and 15 of the Central Sales Tax Act, 1956. Section 6 of the Act provides that notwithstanding anything contained in S. 5(the charging section), the sales or purchases of declared goods by a dealer shall be liable to tax at the rate, and only at the point of sale or purchase specified against each in the Third Schedule on his turnover of such sales or purchases for each year irrespective of the quantum of his turnover in such goods; and the tax shall be assessed, levied and collected in such manner as may be prescribed. Here again we need not refer to that part of S. 6 which deals with inter-state trade. The only other provision which we have to notice is item 6 of the Third Schedule which deals with groundnut. 'The point of levy in respect of that item is when purchased by a miller other than a decortivating miller in the State, at the point of purchase by such miller and in all other cases at the point of purchase by the last dealer who buys in the State. The rate of tax is 2 paise in the rupee.

None of the assessees before us is a decortivating miller, Hence we have to see whether the purchases of groundnut made by them did not become taxable as soon as they made those purchases. It is now well settled that even under the Sales Tax laws, the charge in respect of a sale or purchase becomes effective as soon as the sale in the case of sales tax and purchase in the case

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of purchase tax is made, though the liability of the dealer can be computed only at the end of the year. The incurring of the charge is one thing and its computation is a totally different thing. Hence the turnover relating to the purchases with which we are concerned in these appeals became charged with the liability to pay tax as soon as those purchases were made by the assessee-millers. To

restate the position, whenever a miller purchases groundnut, the turnover relating to that purchase becomes exigible to tax subject to such exemptions as may be given under the Act. This means that as soon as a first miller purchases groundnut, the turnover relating to that purchase, the question of exemption apart-becomes liable to tax. This is also the view taken by the High Court.

It was urged on behalf of the assesseees that if we place that interpretation then even the turnovers relating to subsequent purchases of the same groundnut made by the other millers would become exigible to tax despite the fact that only a single point purchase tax is leviable under the Act. It was further urged that we should not read into item 6 of the Third Schedule the word "first" before the word "Miller" under column 2 thereof. We see no merit in these contentions. Quite clearly in view of s. 14 and s. 15 of the Central Sales Tax Act and s. 6 of the Act, purchase of groundnut

can be taxed only at one stage. Once a particular quantity of groundnut has been subjected to payment of tax, the State's power to tax in respect of those goods gets exhausted and any further dealing in those goods cannot be brought to tax. This is clear from the scheme of the Act. There was no need for the legislature to say "when purchased by first miller" in column 2 of item 6 of the Third Schedule, because from the language employed therein, it is clear that the first purchase becomes eligible to tax and in view of s. 6 of the Act, the subsequent purchases of the same goods cannot be subjected to tax. Therefore there is no question of adding any word into that item, as contended by Mr. M. C. Chagla on behalf of the assesseees.

The next argument advanced on behalf of the assesseees is that in the case of some of the assesseees a part of the groundnut purchased had been sold to other millers; hence in those cases, the assesseees must be taxed only in respect of that part of the turnover which relates to groundnut which they had crushed for extracting oil and in the case of remaining part, it is the last dealer who purchased the same should be taxed. This contention again is unacceptable. As mentioned earlier the event which attracted tax is the act of the miller purchasing groundnut and not his act of crushing the groundnut purchased or dealing with that groundnut in any other manner. We have earlier mentioned that the very act of purchase by a miller attracts the liability to pay tax under s. 5 read with Schedule 3 item 6. His subsequent dealings in those

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goods becomes irrelevant. In none of the cases before us it was shown that any of the assesseees had purchased groundnut with a view to sell them. Hence we need not go into the question as to what would be the position in law where a miller purchases some groundnut for milling and the rest for sale.

Our approach to the question before us is similar to that adopted by the High Court in the decision under appeal. We are in entire agreement with the reasoning of the High Court. But our attention was invited to a later decision of the same High Court in *M. Madar Khan & Co. v. Assistant Commissioner (Commercial Taxes) Anantpur and ors.*(1) which took a view contrary to that taken in the decision under appeal. It is strange that a co-ordinate Bench of the same High Court should have tried to sit on judgment over a decision of another Bench of that court. It is regrettable that the learned judges who decided the later case

overlooked the fact that they were bound by the earlier decision. If they wanted that the earlier decision should be reconsidered, they should have referred the question in issue to a larger bench and not to ignore the earlier decision.

For the reasons mentioned above, these appeals fail and they are dismissed with costs.

V.P.S.

Appeals dismissed.

(1) 27 S.T.C. 18.

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