

PETITIONER:

B. G.SOMANNA & SONS ETC.

Vs.

RESPONDENT:

STATE OF ANDHRA PRADESH & ORS.

DATE OF JUDGMENT 24/07/1972

BENCH:

BEG, M. HAMEEDULLAH

BENCH:

BEG, M. HAMEEDULLAH

RAY, A.N.

DUA, I.D.

PALEKAR, D.G.

CITATION:

1972 AIR 2227

1973 SCR (1) 708

ACT:

Andhra Pradesh General Sales-tax Act, (6 of 1970) Schedule 3 item 6-Item levying tax on groundnuts 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-Item whether levies tax at two points and is thus in conflict with Central Sales-tax Act, section 15.

HEADNOTE:

Under s. 15 of the Central Sales-tax Act the imposition of a tax on the sale or purchase of declared goods is inter alia subject to the restriction that such tax shall not be levied at more than one stage. Groundnuts are declared good under s. 14 of the Act. Item 6 of schedule 3 to the Andhra Pradesh General Sales-tax Act (6 of 1957) levies tax on groundnuts 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 appellants were millers other than decorticating millers. In writ petitions under Article 226 of the Constitution they challenged the levy of tax at the point of purchase by them on the ground that item 6 of schedule III was in conflict with section 15 of the Central Act in as much as tax on groundnut purchased by a non-decorticating miller and later sold as such to other dealers would be taxed at two points once in the hands of the said miller, and again, at the point of purchase by the last dealer. The High Court dismissed the petitions. By certificate appeals were filed in this Court.

Dismissing the appeals,

HELD : The validity of the levy of tax upon a purchase by a last dealer could be questioned by one of the appellants only if he was being taxed as a last dealer and not as a miller. It was apparent that the appellants were being taxed at the point of purchase by them as millers only. Each of the appellants became liable to the payment of tax as a purchasing miller just as a last dealer would be liable on the purchases made by him. Hence the last dealer and the miller who purchases presumably to convert the groundnuts

into other products, are placed on an equal 'footing. It was not shown that there was a possibility of double taxation or of taxation of the same product at more than one point of purchase.

[711 D]

Sri Venkataswara Rice, Ginning & Groundnut Oil Mill Contractors Co. etc. v. The State of A.P. & Ors., A.I.R. 1972 S.C. 51, applied to.

[On the facts of the case the Court did not find it necessary to consider the position of a miller who purchases some grounds(for milling and the rest for sale.)]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: C.A. Nos. 323-332, 1312 & 1174 of 1969.

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Appeals by certificate from the judgment and a decree dated September 27, 1968 of the Andhra Pradesh High Court of Judicature at Hyderabad in Writ Petitions Nos. 2956, 1798, 1931, 2313, 3372, 3740, 3964, 3956 and 4088 of 1968 and Civil Appeal No. 1518 of 1970.

On appeal by certificate from the judgment and order dated March 31, 1970, of the Andhra Pradesh High Court in Writ Petition No. 3501 of 1968 and Appeal by certificate against the judgment and order dated August 25, 1970 of the Andhra Pradesh High Court of Judicature at Hyderabad in Writ Petition No. 4034 of 1970.

B. V. Subramanyam and G. Narayana Rao for the appellants (in CA Nos. 323/69 and 1312/69).

G. Narayana Rao, for the appellants (in all the appeals).

P. Basi Reddy and B. Parthasarathy, for the respondents (in C. As Nos. 323, 332, 1312, 1174/69.)

P. Basi Reddy and A. V. V. Nair, for the respondent, (In C.A. No. 1518/70).

P. Basi Reddy and P. Parameshwara Rao, for the respondent (In C.A. Nos. 2117/70).

The Judgment of the Court was delivered

Beg, J. In these appeals by Certificate only one question of law has been argued. It may be formulated as follows :

"Is any part of the provision of Item 6 of Schedule III of the Andhra Pradesh General Sales Tax Act (6 of 1957) (hereinafter referred to as 'the Act') relating to the 'point of levy' void for contravening Section 15 (a) of the Central Sales Tax Act, 1956 ?"

Each of the appellants before us is a miller and one of a large number of such millers who had applied to the High Court of Andhra Pradesh, under Article 226 of the Constitution, for a Writ of Prohibition against proceedings for assessment of Sales-Tax taken on the strength of an allegedly void provision of law. The validity of item 6 of Schedule III of the Act was challenged on a number of grounds in the High Court which need not be mentioned here as the only ground which has been argued before us is covered by the question formulated above.

It may be mentioned that none of the appellants set out facts showing the nature of the demand in the proceedings under the Act against them, or, the extent, if any, to which each petitioner, who is a miller, registered also as a dealer under the Act as well

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as under the Central Act, sells groundnuts, or, whether groundnuts were purchased specifically only for purposes of crushing them and converting them into oil or into any other

product or for the purpose of sale as well. They have merely questioned the validity of item 6 of Schedule III of the Act by reason of alleged conflict with Section 15 of the Central Act so that all we need do is to set out the two provisions and give our reasons for our conclusions. We have already dismissed the appeals after hearing them. We now proceed to record our reasons.

Item 6 of Schedule III reads as follows

Description of goods--	Point of levy	Rate of tax
Groundnuts		3 naya paise in the rupee

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".

Groundnuts have been declared as goods of special importance in inter-state trade or commerce under Section 14 of the Central Act. Section 15 of the Central Act lays down:

"15. Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely :

(a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed three per cent of the sale or purchase Price thereof, and such tax shall not be levied at more than one stage;

(b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, the tax so levied shall be refunded to such person in such manner and subject to such conditions as may be provided in any law in force in that State".

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It may be mentioned that, in so far as the rate of tax specified in item 6, Schedule III of the Act is concerned, the Andhra Pradesh High Court had itself given some relief to the appellants, on the ground that the definition of turn-over under the Act could include what is more than the sale price as defined by the Central Act, so that the rate may exceed the limit imposed by Section 15(a) of the Central Act. We are, therefore, no longer concerned with the question of rate but only with that part of item 6, Schedule III, which makes millers other than decortivating millers liable to pay the tax when they purchase groundnuts.

It is contended that the groundnuts purchased by the appellants would be taxed at the point of purchase by them and also again in the hands of "last dealers" to whom they may sell. The short answer to this argument could be that the validity of the levy of a tax upon a purchase by a last dealer could be questioned by one of the appellants only if he was being taxed as a last dealer and not as a miller. It is apparent that they are, being taxed at the point of purchase by them as millers only. When they purchase groundnuts as millers they do so presumably in order to convert the groundnuts into another product altogether, and,

they would, therefore, presumably be last purchasers of ground-nuts as "groundnuts". They may be selling their products in forms other than groundnuts. The appellants are, however, not questioning the validity of a tax upon any sales of these other products. They are questioning the validity of the tax on ground-nuts purchased by them. They submit that only one point of taxation can be provided for these sales by a State law. We will, therefore, consider this ground.

It is clear to us that, in such cases, the liability to pay tax, which is a tax on purchase, falls only at one point. In fact, the question raised before us seems to us to be covered by a decision of this Court on item 6 of Schedule III in *Sri Venkateswara Rice, Ginning & Groundnut Oil Mill Contractors Co. etc. v. The, State of A. P. & Ors.* (1) where this Court said at page 53 :

"None of the assessee before us is a decorticating 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 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

(1) A.I.R. 1972 S.C.51.

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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 may be mentioned here that, in the above mentioned case, the assessee had already been taxed and one of the arguments advanced there was that the part of the taxed turnover which was sold by the assessee miller to other millers should be excluded because it was not dealt with by him as a miller but as a dealer who was not the last purchaser. The Court said

"The next argument advanced on behalf of the assessee is that in the case of some of the assessee a part of the groundnut purchased had, been sold to other millers; hence in those cases, the assessee 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 very act of purchase by a miller attracts the liability to pay tax under Section 5 read with Schedule 3 item 6. His subsequent dealings in those goods become irrelevant. In none of the cases before us it was shown that any of the assessee 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 ground-nut for milling and the rest for sale'.

In the cases before us also we need not consider the position of a miller who purchases some groundnuts for milling and the rest for sale. It is clear that each of the appellants becomes liable to the payment of tax as a purchasing miller just as a last dealer would be liable on the purchases made by him.

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Hence, the last dealer and the miller, who purchases presumably to convert the groundnuts into other products, are placed on an equal footing. We were not satisfied that there is a possibility of double taxation or of taxation of the same product at more than one point of purchase.

These appeals were, therefore, dismissed by us on 1-5-1972.

The respondents are entitled to their costs in this Court.

G.C.

Appeals dismissed.

-L152 Sup CI/ 73

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