ANDHRA PRADESH HIGH COURT

M. Madar Khan

Vs.

Assistant Commissioner

Writ Petns. Nos. 1853 and 1854 of 1966

(Chinnappa Reddy and Madhava Reddy, JJ.)

10.03.1970

JUDGMENT

Chinnappa Reddy, J.

1. The petitioner is a firm carrying on business in the purchase of groundnuts, decortications of groundnut into kernel and sale of kernel to millers or other dealers or export of kernel outside the State of Andhra Pradesh. The firm owns no equipment for crushing the kernel into oil and does not engage itself in the business of crushing kernel into oil. During the assessment years 1961-62 and 1962-63 the petitioner was assessed to sales tax on turnovers which included amounts representing the first purchase of groundnuts notwithstanding the fact the groundnuts were sold to millers or other dealers after decortications. The Commercial Tax Officer included these amounts on the ground that a person working as decorticator is a miller within the meaning of Item 3 of Schedule IV of the Andhra General Sales Tax Act as it stood during that period. Appeals preferred by the petitioner to the Assistant Commissioner were dismissed and thereafter the petitioner instead of preferring appeals to the Sales Tax Appellate Tribunal has filed the present application for the issue of writs of certiorari to quash the orders of assessment. The ground alleged for circumventing the procedure of preferring appeals to the Tribunal and preferring revision later to the High Court is that the petitioner was unable to prefer appeals to the Tribunal as he was not in a position to pay the tax demanded from him. We are not quite satisfied with the reason given by the petitioner for not availing himself the remedy prescribed by statute. But nonetheless we have decided to dispose of the Writ Petitions on merits as the Writ Petitions were admitted in 1966 arid have been pending in this court for four years and there would be no point in dismissing the Writ Petitions after this lapse of time on the ground that the petitioner had an adequate alternate remedy. The IV Schedule to the Andhra Pradesh General Sales Tax Act of 1957 contained the description of declared goods in respect of which a single point tax only was leviable under Section 6 of the Act and the point at which it was leviable. "Declared goods" are defined in Section 2(f) of the Act as meaning goods declared under Section 14 of the Central Sales Tax Act, 1956 to be of special importance in inter-State trade or commerce. The entries in Schedule IV were amended from time to time. The result of the amendments was concerned; for the period from 15-6-1957 to 1-5-1959 groundnuts were exigible to tax at the point of first purchase in the State. For the period from 1-5-1959 to 1-10-1961 they were exigible to tax at the

point of last, purchase in the State. For the period 1-10-1961 to 1-8-1963 they were eligible to tax 'when purchased by a miller in the State at the point of purchase by the miller and in all other cases at the point of purchase by the last dealer who buys in the State'. The Act and Schedules were further amended in 1963 and the points at which declared goods became exigible to tax were detailed in III Schedule instead of in the IV Schedule. Item No. 6 of the III Schedule dealt with groundnuts and they were eligible to tax "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." In the present writ petitions we are concerned with the eligibility of groundnuts to tax during the period 1-10-1961 to 31-3-1963.

2. Sri S. Dasaratha Rami Reddy, learned counsel for the petitioner submits that miller in item 3 of Schedule IV as it stood between 1-10-1961 and 1-8-1963 meant a miller who engaged himself in the business of crushing groundnut oil and not a person who merely engaged himself in the business of decorticating groundnuts. He submitted that if miller is given a meaning so as to include a person who engaged himself in decorticating only there would at once be an uncertainty as to the point at which tax was livable and there was a possibility of tax being levied at more than one point. That would contravene the provisions of Section 15(a) of the Central Sales Tax Act.

3. Section 15 of the Central Sales Tax Act is as follows :-

> "15. Restrictions and Conditions in regard to tax on the sale or purchase of declared goods within a State :

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 be levied only in respect of the last sale or purchase inside the State and shall not exceed two per cent of the sale or purchase price,
> (b) . . . . . ."

Section 15(a) prohibits any law of a State relating to Sales Tax from imposing a tax on the sale or purchase of declared goods at more than one stage and at a rate exceeding 2 per cent. The submission of Sri Dasaratha Rami Reddy was that if a person who merely decorticates groundnut and sells a kernel is subjected to sales tax on the ground that he is a miller and if after the sale by such person the groundnuts again pass from dealer to dealer by sale, the last dealer purchasing in the State would again be subjected to tax under the second limb of Item 3 of Schedule IV. That would be contrary to the provisions of Section 15 of the Central Sales Tax Act. The submission of the learned Government Pleader was that once sales tax has been paid at the stage of purchase by the person decorticating the groundnuts there is no further liability on subsequent purchasers to pay tax, the power of the State to levy having become exhausted at the stage of purchase by the person decorticating the groundnuts. It is not possible to agree with the submission of the learned Government pleader for the simple reason that it would be impossible for the last dealer who buys in the State to say with any degree of certainty that so much of the groundnuts

purchased by him was already subjected to tax and so much was not. We may illustrate this point as follows :- The last dealer who buys in the State may purchase from other dealers. The last dealer in the State 'D' purchases a quantity of groundnuts from dealer 'A'. 'A' in turn might have purchased from dealer 'B' amongst whose customers 'A' may be one among many, 'B' in turn might have purchased the groundnut from dealer 'X'. Producer 'Y' and decorticator 'Z'. Out of the three persons 'X', 'Y', 'Z', 'X' and 'Y' would not have paid any tax whereas 'Z' might have paid tax. When 'B' purchases from 'X', 'Y' and 'Z' and the groundnut is pooled the identity of the groundnut purchased from 'Z' is lost and when 'B' sells to 'A' and others and 'A' sells to 'D' and others it would be impossible for 'D' to say with any degree of certainty that what was purchased by him from 'A' was what was sold by 'Z' to 'C'. That uncertainty may result in the goods being taxed at more than one point and there would then be a clear contravention of Section 15(a) of the Act. That has been held by their Lordships of the Supreme Court in *Bhavani Cotton Mills Limited v. State of Punjab*[1]. In construing Entry 3 of Schedule IV we must give the word 'miller' a meaning which would fit in with the scheme of the Central Sales Tax Act and the Andhra Pradesh General Sales Tax Act and not a meaning which would make the entry obnoxious to Section 15 of the Central Sales Tax Act. That of course we can do only if it is possible to do so without doing violence to the language of the entry. It is true that in *Aswathanarayana v. Deputy Commercial Tax Officer*[2], a Division Bench of this Court held that the word 'miller' in Item 3 of Schedule IV was used to include both decorticating as well as oil miller. The learned Judges who decided the case, however, did not construe the word 'miller' occurring in the IV Schedule with reference to the Central Sales Tax Act to which the Schedule and Section 6 were subject. In that case also the learned Judges recognised that the words 'to mill' may mean to grind or to crush and mill may mean machinery employed for grinding or crushing. We are of the view that in the light shed by the Central Sales Tax Act and in the context of Schedule IV the word 'mill' in Entry 3 is used to mean the person engaged in crushing the groundnut and extracting oil by the employment of machinery. Item 3 itself gives an indication. The second limb refers to the last purchaser within the State, while the first limb refers to a miller who purchases groundnuts. In both the cases it is said that the exigibility to tax is at the point of purchase. The scheme of Item 3 appears to be to make groundnuts exigible to tax at the point when they cease to be taxable commodities either when groundnuts cease to be groundnuts by being crushed into oil or when groundnuts pass from the State. In our opinion item 3 makes groundnuts exigible to tax at the point of purchase by a person who destroys the identity of groundnuts within the State. It is from this context that the word 'miller' must take its meaning and if understood in this context the word 'miller' can only mean the person who crushes groundnuts into oil. We are of opinion that the word 'miller' in Entry 3 does not include a person who merely decorticates groundnuts. In *State of Andhra Pradesh v. Lakshmi Oil Mills*[3], and *Radhakrishna and Co. v. State of Andhra Pradesh*[4], two Division Benches of this court appear to have proceeded on the basis that a 'Miller' in the third Schedule meant a person who owned or possessed a Mill equipped to crush groundnut into oil. In the first case Krishna Rao, J., observed, "On a plain reading of the section, we uphold this contention and hold that the words "when purchased by a miller" refer to purchase by the first miller irrespective of the fact whether the said miller retained the goods either wholly or in part for the purpose of crushing or whether he merely sold them as an ordinary dealer. Once groundnut is purchased by the

[1]20 STC 290
[2](1964) 15 STC 795 (Andh Pra)
[3] (1967) 20 STC 489 (Andh Pra)
[4](1969) 24 STC 320 (Andh Pra)

first miller, that is enough to bring him within the net of taxation. It is not the duty of the taxing authority to examine as to what he did with the stock or wait till he thinks of crushing them into

oil. The Legislature never contemplated a miller taking the role of a mere dealer".

In the second case Jaganmohan Reddy, C. J. observed :

> "In the case where groundnuts are purchased by a Miller, the Legislature assumed that he is also the last dealer because of the assumption that when a miller purchases it, he does so only for crushing. If the Legislature had contemplated that millers who own or lease a mill for the purposes of crushing oil-seeds into oil, not only crush them into oil but also deal in the goods just like ordinary dealers who buy and sell them in order to make profit, there was nothing to stop them from treating them like ordinary dealers . . . . . In other words, it is the first miller alone that will be liable to tax because he alone could be deemed to have crushed it . . . . . Certainly as long as he is actively running a mill and buys oil seeds, he will be deemed to have bought them only to crush."

We do not agree with several of the observations and conclusions of the learned Judges - about that we will say more later - but it is clear that the learned judges proceeded on the basis that a Miller meant a person who ran a Mill equipped to crush oil-seeds into oil. True, that learned judges were dealing with Item 6 of the Schedule III after the amendment of 1963 and that read as 'miller other than a decorticating miller.' But the observations of the learned Judges are of a general nature and to the extent that they appear to support the meaning given by us to the word 'miller'. We are content to say that the observations 'appear' to support the meaning given by us.

4. The learned counsel for the petitioner urged that if the word 'miller' is construed as including those who do not purchase the oil-seeds for crushing, an uncertainty would be introduced into the first limb of the entry regarding the point at which tax is to be levied. The learned Government Pleader answered the argument by saying that the 'first miller' alone would be liable to tax. We have already referred to the difficulty of accepting such contention.

5. In (1967) 20 STC 489 (Andh Pra) and (1969) 24 STC 320 (Andh Pra) the learned Judges held that the 'first miller' who purchased the oil-seeds was eligible to tax whether he crushed the oilseeds into oil or whether he sold the oilseeds again as oil-seeds that is, whether he functioned as a miller or a dealer. According to the learned judges it was enough that he was a miller. The learned judges appear to have labored under the impression that a person who is a miller is expected to engage himself in the business only of crushing oil-seeds and not in the business of purchasing and selling oil-seeds. This is apparent from their observations that 'the Legislature never contemplated a miller taking the role of a mere dealer.' The law does not play to the wishes and fancies of persons who are expected to discharge a particular function by acting in a manner they are not expected to act, if it is not the business of a miller to buy and sell goods, the fact that he buys and sells goods has to be ignored 'and it is the miller or the dealer that is fickle, because of the exigencies of his business which prompt him to act in a way contrary to the provisions of law'. We fail to see any warrant for these observations. If a person who runs a mill also does the business of purchase and sale of oil-seeds, we do not understand how he can be said to have contravened any provisions of law or why he should be thought to be acting in a manner he is not expected to act. There is no warrant for any expectation that a person who runs a mill will not engage himself in any other kind of business in oil-seeds. On the other hand, it is well-known

that except in the case of very large establishments, ordinary millers invariably engage themselves in the business of purchase and sale of oil-seeds in addition to the business of crushing oil-seeds into oil. It is on the basis of these assumptions that the learned Judges thought that the Legislature never contemplated 'a miller taking the role of a mere dealer' and arrived at the conclusion that the entire turnover of a person who ran a mill was exigible to tax, irrespective of the fact that part of it did not relate to the milling business at all but pertained to the business of buying and selling. According to the learned Judges if the miller did not purchase the goods for crushing into oil but only for selling them, he would be deemed to have purchased them for crushing. Since there could be several such successive millers dealing with a consignment of oil-seeds without crushing it the learned Judges were faced with the problem at what point sales tax to be levied. They resolved the problem by holding that the tax was eligible at the point or purchase by the first miller. In doing so, they read the word 'first', which was not there, into the entry. We see no reason for amending the entry by adding the word 'first'. We think that all the deeming and adding can and should be avoided by literally construing the word 'miller' to signify a person who functions as a miller, that is to say, who converts groundnuts into oil. If the word 'miller' is so understood, it is easy to understand why the Legislature did not specify whether the purchase should be the first or last purchase, in connection with a purchase by a miller, since there can only be one stage at which the groundnuts are crushed into oil. In all other cases where the same person also functions as a dealer he will be liable to tax only if the purchase can be brought within the second limb of the entry, that is if it is the last purchase within the State. So construed the object of the Legislature to tax the goods at the point of last purchase alone before the goods lose their identity as a taxable commodity is carried out. That this is the object of the entry was also recognized by the learned Judges who decided the two cases referred to.

6. Though we have expressed our disagreement with the two decisions, it is not necessary to refer the case to a larger Bench in the view taken by us that the word 'miller' occurring in Entry 3 of IV Schedule does not take in a person who decorticates groundnuts. We have expressed our views only because we do not want to be understood as having accepted the views of the learned Judges in the earlier two cases. In the result the two writ petitions are allowed. There will be no order as to costs. Advocate's fee Rs. 100/- in each.
Writ petitions allowed.