Ganesh Traders Vs. Special Assistant Commercial Tax Officer

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Court : Andhra Pradesh

Decided On : Dec-11-1995

Reported in : [1996]101STC329(AP)

Judge : P. Ramakrishanam Raju and ;P. Venkatarama Reddi, JJ.

Acts : Andhra Pradesh General Sales Tax Act - Sections 29

Appeal No. : Writ Petition No. 19144 of 1994

Appellant : Ganesh Traders

Respondent : Special Assistant Commercial Tax Officer

Judgement :

P. Venkatarama Reddy, J.

1. This writ petition is filed seeking a declaration that the collection of tax of Rs. 3,200 by the respondent as per receipt No. 951034 dated October 21, 1994 as arbitrary, illegal and without jurisdiction and to direct the respondent to refund the amount to the petitioner and also to direct the respondent not to detain the future consignments if they are accompanied by valid documents under Section 29 of the A.P. General Sales Tax Act.

2. It is the case of the petitioner that he purchased groundnut seeds from Dhanalakshmi Oil Seeds Traders, Srikalahasti, that the consignment was being

transported by a lorry to the petitioner's place of business and that the consignment was covered by all the requisite documents including receipt issued by the Agricultural Market Committee, Srikalahasti. There was, therefore, no reason to collect the tax during transit as it is not a case of evasion or attempted evasion of tax. It is also contended that no reasons have been assigned for the collection of tax at the check-post nor was any order of detention of goods passed, though the goods were detained on October 20, 1994.

3. It is stated in the counter-affidavit that the respondent, on perusing the records relating to the consignment, entertained some suspicion as to the role played by M/s. Andhra Oil Seeds Company, Hyderabad, which acted as a broker. In other words, the respondent submits that there was a doubt as to who was the last purchaser liable to pay the tax. In order to clear this suspicion, the respondent submits that he detained the vehicle on October 20, 1994 and issued a notice on the same day to the driver of the vehicle to cause appearance of the owner of the goods within 48 hours. It is submitted that thereafter, the driver of the vehicle came forward to pay the tax of Rs. 3,200 on October 21, 1994 and the same was accepted by him. It is reiterated in the counter that in order to know the real purchaser of the goods, the driver of the lorry was served with a notice on October 20, 1994 and therefore the petitioner through the lorry driver voluntarily paid an amount of Rs 3,200 towards the tax.

4. Assuming that the respondent had entertained a suspicion and there was something in the documents which suggested an attempt to evade the tax, the respondent should not have detained the vehicle without passing an order recording the reasons. The statutory powers vested in him should not have been exercised in such a casual manner without taking into account the mandatory procedure laid down for the detention and seizure of goods or vehicle. Be that as it may, this issue is almost academic now. The fact remains that an amount of Rs. 3,200 has been collected towards tax. At this stage, we need not go into the question whether the tax paid was voluntary or involuntary and whether the collection was justified. It is not in dispute that the petitioner is a registered dealer. The relevant assessment year is already over. The petitioner would have filed the returns already. Suffice it to direct that the assessment shall be finalised within 2

months from the date of receipt of this order and while making assessment, the assessing authority shall grant adjustment of the tax collected from the petitioner on October 21, 1994.

5. With these observations, the writ petition is disposed of. We consider it a fit case to award costs quantified at Rs. 400 (rupees four hundred only) payable by the respondent to the petitioner.

6. Writ petition disposed of accordingly.