(1999) 07 AP CK 0115

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 25989, 26069, 26074, 26345, 26602, 26603, 26604, 26662, 26663, 26665, 26666, 26668, 26669, 266670, 266675 of 1997 and 33083 of 1998

A. Bapu Reddy APPELLANT

Vs

Andhra Pradesh Forest Development Corporation Limited and Another RESPONDENT

Date of Decision : 30-07-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 07 AP CK 0115

Hon'ble Judges : P. Venkatarama Reddi, J;B. Prakash Rao, J

Bench : Division Bench

Advocate : P. Srinivasa Reddy and T.V.S. Kumar, for the Appellant; Srirama Krishna Murthy, S.C., Special Government Pleader for Texas and Government Pleader for Forests, for the Respondent

Judgement

P. Venkatarama Reddi, J.—The petitioners who entered into agreements with the Andhra Pradesh Forest Development Corporation for the purchase/ procurement of abnus leaves from the specified forest coupes during the year 1997-98 have filed these writ petitions seeking the relief to issue a writ or order declaring that the procurement of abnus leaves by the petitioners from the forest is by conferment of right on the land and consequently the payments made by the petitioners are not exigible to any sales tax under the Act and to direct the 1st respondent to release the stock of abnus leaves without insisting on payment of sales tax on the component of collection charges. An alternative prayer is made to declare the communication addressed by the Commissioner of Commercial Taxes in reference AI(3)/2118/97, dated July 3, 1997 to the Vice-Chairman and Managing Director of the Andhra Pradesh Forest Development Corporation Limited as illegal. Except Writ Petition No. 33083 of 1998 all the writ petitions relate to the assessment year 1997-98. W.P. No. 33083 of 1998 relates to the year 1998-99. The impugned communication addressed by the Commissioner of

Commercial Taxes in reply to the representation sent by the Forest Development Corporation reads as follows :

"With reference to the letter cited, I am to inform that whatever amount is charged by the seller towards sale consideration, it constitutes sale price. The sale price by whatever name is collected constitutes the turnover. Therefore, the Andhra Pradesh Forest Development Corporation Limited is liable to tax on the total amount so collected from the buyer even though it is collected under different heads."

2. Abnus leaves or beedi leaves are taxable at the point of sale by the Forest Development Corporation and in other cases at the point of first purchase in the State.

3. The contention of the petitioners is that the collection charges reimbursed by the petitioners do not form part of the sale price and turnover of the Corporation. It is pointed out that the earlier judgment of this Court in Sri Venkateswara Beedi Leaves Contractors and Others Vs. The State of Andhra Pradesh, has no application inasmuch as the agreement for the relevant year 1997-98 is different. The terms of the agreement as well as the modalities for carrying out the agreement demonstrate that the collection charges are reimbursed by the petitioners not as part of the sale consideration, but as post sale expenses. It is submitted that the distinction in the features of the previous agreement and the present agreement has not been appreciated by the Commissioner while expressing his view by the impugned communication. It is further submitted that so long as the Commissioner''s opinion stands, no assessing authority will take a different view.

4. The communication dated July 3, 1997 of the Commissioner is in general terms and reiterates the well-known legal position that whatever amount is charged by the seller towards sale consideration by whatever name it is called constitutes sale price. It does not appear from the communication that the specific question whether the collection charges paid by the petitioners would form part of the sale price having regard to the terms and features of the agreement and the pattern of transactions that have taken place pursuant thereto have been taken into consideration by the Commissioner. The opinion was expressed in very general terms. The Forest Development Corporation purported to act on the basis of this communication and decided to collect sales tax on the collection charges also. We are of the view that the questions whether collection charges form part of the sale consideration charged by the Forest Development Corporation and whether it constitutes turnover in the hands of the Corporation have to be decided by the competent assessing authority after looking into the relevant documents. Suffice it to observe that the Commissioner''s opinion cannot be regarded as having expressed a definite view on the specific question whether having regard to the terms of the agreement in the relevant year 1997-98, the collection of charges enter into the sale price pertaining to abnus leaves sold to the petitioners. The assessing authority

concerned is bound to decide that issue independently on a consideration of all the relevant documents. We cannot, in exercise of our jurisdiction under Article 226, undertake investigation into factual details and enter into a finding on questions of fact or mixed questions of law and fact. At the same time, it is just and proper to provide a remedy to the petitioner to agitate the question before the appropriate assessing authority. We are informed by the counsel for the Forest Development Corporation that the assessment of the Corporation for the year 1997-98 has not been finalised. That being the case, we deem it expedient to give an opportunity to the petitioners to file their objections to the proposed assessment on the disputed item before the assessing officer in-charge of assessment of Andhra Pradesh Forest Development Corporation. The said assessment officer should give an opportunity of hearing not only to the assessee, i.e., the Forest Development Corporation but also the petitioners. In case the petitioners do not appear on the date fixed by the assessing officer, it is open to him to finalise the assessment after taking into account the written objections that may be filed by the petitioners within a period of three weeks from today. As already observed, the assessing authority, irrespective of the communication dated July 3, 1997 sent by the Commissioner to the Forest Development Corporation should decide the issue independently. Depending on the result of the assessment, the Forest Development Corporation should either refund or demand the tax on the collection charges. In case an adverse order is passed, it is open to the petitioners to file appeals against that order even if the Forest Development Corporation fails to file the appeal and the Corporation shall furnish a true copy of the assessment order to the petitioners and the same shall be accepted by the appellate authority provided the other requirements for filing the appeal are satisfied. We, further direct that assessment shall be made and the appeals, if any, shall be disposed of expeditiously.

5. As regards the contention raised in W.P. Nos. 26074 of 1997 and 33083 of 1998 with regard to the application of concessional rates on filing G-forms, that point has been decided against the respondents and they should act in conformity with the judgment of this Court in Sable Weghire & Company Ltd. v. A.P. Forest Development Corporation Ltd. 1998 109 STC 656.

The writ petitions are accordingly disposed of. There shall be no order as to costs.