(1987) 04 AP CK 0006

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 19 of 1984

Andal and Company APPELLANT

Vs

State of Andhra Pradesh RESPONDENT

Date of Decision : 23-04-1987

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 5, 6, 6

Citation : (1988) 71 STC 385

Hon'ble Judges : Upendralal Waghray, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : P. Venkatarami Reddy, for the Appellant; Government Pleader for Commercial Taxes, for the Respondent

Judgement

Jeevan Reddy, J.—The petitioner purchased gum from Sri Venkateswara & Co., Osmangunj, Hyderabad. Venkateswara & Co. is a registered dealer. The gum is taxable at sale point. Indeed it is taxable at every point of sale. Venkateswara & Co. did not however collect the tax while effecting the said sale on the ground that it was acting as the selling agent of the agriculturist producers and inasmuch as the principals are exempted, their agent is equally exempted. After purchasing the gum the petitioner despatched it to other States for sale through agents. Originally, assessment was made exempting the turnover relating to gum in a sum of Rs. 3,54,502 on the ground that no sale has taken place within the State. Later the assessment was reopened and the transaction subjected to tax u/s 6-A.

2. The Tribunal has held that by virtue of clause (i) of section 6-A read with clause (c) of the said section the tax is leviable. Section 6-A reads as follows :

"6-A. Levy of tax on turnover relating to purchase of certain goods. -

Every dealer, who in the course of business -

(i) purchases any goods (the sale or purchase of which is liable to tax under this Act) from a registered dealer in circumstances in which no tax is payable u/s 5 or u/s 6, as the case may be, or

(ii) purchases any goods (the sale or purchase of which is liable to tax under this Act) from a person other than a registered dealer, and

(a) either consumes such goods in the manufacture of other goods for sale or otherwise, or

(b) disposes of such goods in any manner other than by way of sale in the State, or

(c) despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce,

shall pay tax on the turnover relating to purchase aforesaid at the same rate at which but for the existence of the aforementioned circumstances, the tax would have been leviable on such goods u/s 5 or section 6."

3. The first contention of Mr. P. Venkatarami Reddy, learned counsel for the petitioner, is that clause (i) cannot be said to be attracted in this case. His submission is that the words "in the circumstances in which no tax is payable u/s 6 or u/s 6 as the case may be" do not take in a case like the present one. He says that those words take in a case like the one where the tax is not leviable because the turnover of the dealer is less than the prescribed limit. We are however unable to see any reason to place any such restricted meaning upon the said words occurring in the statute. Now it is not disputed that gum is taxable generally under the Act. But the registered dealer who sold the same to the petitioner did not collect the tax for the reason that he was acting as an agent of the agriculturist producer. This is a case where the tax was not collected because of the said circumstance. If so, it would squarely fall under clause (i) as pointed out by the Supreme Court in The State of Tamil Nadu Vs. M.K. Kandaswami and Others, , while considering an identical provision in the Tamil Nadu General Sales Tax Act. The object of such a provision is to plug leakage and prevent evasion of tax. In other words where the goods liable to tax under the Act are not taxed for one or the other reason, then the purchaser is made liable to pay the tax provided the other requirements under the section are satisfied. In this case, the person who purchased, i.e., the assessee, is a dealer. He purchased the same in the course of business and he purchased it from a registered dealer who did not collect the tax because of the particular circumstance, namely, that he was acting as the agent of the agriculturist producer. We may also mention that in this case, clause (c) of section 6-A is also satisfied because the goods have been despatched by the petitioner to a place outside the State for sale. In our opinion therefore the Tribunal was right in holding that the goods have been properly subjected to tax u/s 6-A of the Andhra Pradesh General Sales Tax Act. The T.R.C. is accordingly dismissed. No costs. Advocate''s fee Rs. 200.

4. Petition dismissed.

