(1994) 07 AP CK 0010

In the Andhra Pradesh High Court

Case No : T.R.C No''s. 78 to 82 of 1991

Andhra Conductors (P.) Ltd. APPELLANT

Vs

State of Andhra Pradesh RESPONDENT

Date of Decision : 01-07-1994

Acts Referred:

Citation : (1994) 95 STC 320

Hon'ble Judges : S.S. Mohammed Quadri, J;P.L.N. Sarma, J

Bench : Division Bench

Advocate : K. Raji Reddy, for the Appellant; The Government Pleader for Commercial Tax, for the Respondent

Judgement

Syed Shah Mohammed Quadri, J.—The question which is canvassed in these revision cases is common, therefore, they are heard together and are being disposed of by a common order.

2. The question is "whether on the facts and circumstances of the case the Central excise duty amounts relating to sales, under a special scheme reimbursable to the petitioner as an incentive, shown in the invoices without being collected from the buyer, would form part of the sale consideration so as to be taxable turnover."

3. The learned counsel for the petitioner relies on a judgment of a Division Bench of this Court in Sakthi Engineering Co. Vs. State of Andhra Pradesh, in support of his contention that they do not form part of turnover. A similar question came up for consideration of the Division Bench of this Court in that case and it was held that tax on such excise duty was not payable by the customer, namely, the Electricity Board as it did not form part of the taxable turnover. But the learned Government Pleader brought to our notice a judgment of another Division Bench of this Court in Sakti Engineering Company Vs. State of Andhra Pradesh and Others, . In that case it was held that as the assessee has collected sales tax from the purchaser-customer, it cannot be allowed to retain the amount so

collected and claim exemption. It may be pointed out that the said judgment in Sakti Engineering Company Vs. State of Andhra Pradesh and Others, was reviewed in Shakti Engineering Company Vs. Commercial Tax Officer, Company Circle, Vijayawada and Another, and that judgment was set aside. In view of this position, the learned Government Pleader cannot rely on the judgment in Sakti Engineering Company Vs. State of Andhra Pradesh and Others, .

4. The result of the discussion is that as the petitioner-assessee did not collect the excise duty from the customer-purchaser, it did not form part of the consideration. Therefore, it cannot be taken as part of turnover. In this view of the matter, we set aside the order of the Tribunal and allow the revisions. However, we make it clear that the sales tax shown in the bills and collected by the assessee from the customer-purchaser should be refunded to the customer-purchaser.

5. Subject to the above direction, the tax revision cases are allowed. No costs.

6. Petitions allowed.

