(2001) 07 AP CK 0112

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 39 of 1993

B. Narasaiah and Co. — APPELLANT

Vs

State of A.P. — RESPONDENT

Date of Decision : 12-07-2001

Acts Referred:

Citation : (2001) 4 ALT 387 : (2002) 127 STC 606

Hon'ble Judges : S.R. Nayak, J;S. Ananda Reddy, J

Bench : Division Bench

Advocate : Taj Prakash Toshniwal, for the Appellant; The Special Government Pleader for Taxes, for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, J.—The question that arises for consideration in this tax revision case is whether the purchase of turmeric made by the petitioner/dealer from one Bantu Chinnaiah & Co.. Nizamabad is liable to be taxed in the hands of the petitioner as the first purchase of the goods.

2. The petitioner is a dealer in turmeric and other goods. According to it, during the assessment year 1986-87, it purchased turmeric of the value of Rs. 3,48,440 from Bantu Chinnaiah & Co., Nizamabad, a registered dealer under the provisions of the A.P. General Sales Tax Act, 1957 (hereinafter referred to as "the Act" for brevity). So claiming, the petitioner claimed exemption on a turnover of Rs. 3,48,440. The above claim of the petitioner was rejected by the assessing authority and that order has been confirmed by the Appellate Deputy Commissioner as well as the Tribunal, on the ground that the evidence placed before them do not disclose that the disputed turnover suffered tax and the seller of the goods paid the tax of Rs. 63,313.25. Before the Tribunal, the petitioner produced an affidavit of one Bantu Sayuloo, said to be the proprietor of Bantu Chinnaiah & Co., Nizamabad, by way of additional evidence. A copy of the said affidavit is produced before us, at page No. 14 of the material papers. The relevant portion of the said affidavit reads :--

"During the assessment year 1986-87, i.e., August 18, 1986 (closure date) before the closure of my business, I sold turmeric of Rs. 3,48,440 to B. Narsaiah & Co., Nizamabad. The said turmeric becomes tax suffered one, since I purchased the same in Nizamabad from Kacha Adtiyas (commission agent) and purchase turnover of turmeric is being assessed on me in assessment year 1986-87 as a registered dealers and I am registered dealer during the time of my sales to B. Narsaiah & Co., Nizamabad, having R.C. Nos. A.P.G.S.T. 6172/80-81 and C.S.T. No. 2487/80-81 and I have been assessed by the Deputy Commercial Tax Officer-I on total turnover which includes the abovesaid sales to B. Narsaiah & Co., and corresponding purchase turnovers were taxed in assessment order 1986-87 by the Deputy Commercial Tax Officer-I, Nizamabad, on March 9, 1990 (Asst. No. 11128/86-87)."

3. According to the deponent of this affidavit, during the assessment year 1986-87 he sold turmeric of the value of Rs. 3,48,440 to the petitioner/dealer and that goods suffered tax in his hand and that turnover has been assessed by the Deputy Commercial Tax Officer. Therefore, there is evidence placed before the Tribunal that there was sale between Bantu Chinnaiah & Co., Nizamabad and the petitioner-firm. The reasons given by the assessing authority and accepted by the Tribunal to disallow the claim of the petitioner are that the so-called transaction does not find a place in the return filed by the petitioner for the assessment year 1986-87 and secondly the above assessed tax is not paid by Bantu Chinnaiah & Co., Nizamabad. Therefore, it has to be seen whether the above two reasons given by the assessing authority and the Tribunal could be valid grounds to disallow the claim of the petitioner.

4. This Court in The State of Andhra Pradesh Vs. Thungabhadra Industries Ltd., dealing with a claim of registered dealer, who claimed as a second seller of groundnut oil, taxable at the first point of sale within the State of Andhra Pradesh, under the provisions of the Act, laid down two principles to allow the exemption. They are (1) that the first seller should be a real and identifiable dealer within the State ; and (2) that mere non-payment of tax by the first seller within the State does not shift the liability to pay tax on the second seller. In the light of these principles laid down by this Court, with which we are in respectable agreement, when we look at the facts of this case, it cannot be said that the petitioner failed to establish that he made the purchase from a real and identifiable dealer within the State. There is no controversy that Bantu Chinnaiah & Co., Nizamabad, is a registered dealer under the provisions of the Act and its identity is also not in dispute. As rightly pointed out by the learned Special Government Pleader for Taxes, it is true that there is no satisfactory evidence placed before the Tribunal or before us to show that the vendor of the petitioner filed returns including the sale of turmeric in the turnover. However, the department assessed the tax on the gross turnover of Rs. 8,85,500 and determined the tax of Rs. 63,313.25 paise. The reason that the vendor of the petitioner did not pay the assessed tax cannot be a valid ground to disallow the claim of the petitioner. We say this because under the statute, if the vendor is

alone is liable to be taxed and if he fails to discharge the said liability, it is always open for the authorities under the Act to proceed against him and recover the same by the mode known to law. But that circumstance can never be a valid and tenable ground to disallow the exemption claimed by the petitioner.

5. In that view of the matter and having regard to the judgment of this Court in The State of Andhra Pradesh Vs. Thungabhadra Industries Ltd., , we allow this tax revision case and set aside the order of the Tribunal and we declare that the petitioner/assessee is entitled to the exemption in respect of the disputed turnover.

No costs.