(1989) 01 AP CK 0026

In the Andhra Pradesh High Court

Case No : T.R.C. No''s. 230 and 236 of 1988

Bismillah and Co. APPELLANT

Vs

State of Andhra Pradesh RESPONDENT

Date of Decision : 25-01-1989

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 38
Central Sales Tax Act, 1956 — Section 5(1), 5(3)

Citation : (1989) 73 STC 135

Hon'ble Judges : V. Neeladri Rao, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : S. Dasaratharama Reddi and S.R. Ashok, for the Appellant; The Government Pleader for C.T. Department, for the Respondent

Judgement

B.P. Jeevan Reddy, J.—A common question arises in these two T.R.Cs. The assessee, Bismillah & Company, Yemmiganur, purchased raw hides and skins and sold them to M/s. Bharat Skins Corporation, Madras. The said Madras Corporation exported them to a foreign country. The question is : Whether the purchase of raw hides and skins by the petitioner within the State attracts the tax under the provisions of the Andhra Pradesh General Sales Tax Act, 1957 ? Raw hides and skins are taxable at purchase point under item 9 of the Third Schedule to the Andhra Pradesh General Sales Tax Act. Column (3) of the Schedule says : "When purchased by a tanner in the State at the point of purchase by the tanner and in all other cases at the point of purchase by the last dealer who buys them in the State." According to this, since the petitioner is the last purchaser in the State, he is liable to pay the tax. But his contention is that he is exempt from paying so by virtue of sub-section (3) of section 5 of the Central Sales Tax Act, 1956 read with section 38 of the Andhra Pradesh General Sales Tax Act, 1957. Sub-sections (1) and (3) of section 5 of the Central Sales Tax Act read as follows :

"(1) A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India."

"(3) Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export."

2. Section 38 of the Andhra Pradesh General Sales Tax Act, 1967 reads as follows :

"Nothing contained in this Act shall be deemed to impose or authorise the imposition of a tax on the sale or purchase of any goods, where such sale or purchase takes place, -

(i) outside the State; or

(ii) in the course of the import of the goods into, or export of the goods out of the territory of India; or [2 [1 (iii) in the course of inter-State trade or commerce.

Explanation. - The provisions of Chapter II of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), shall apply for the purpose of determining when a sale or purchase takes place in the course of inter-State trade or commerce or outside a State or in the course of import or export."

3. Under sub-section (1) of section 5 of the Central Sales Tax Act the purchase of the goods which occasions the export is exempted. This sub-section does not further exempt the purchase by the exporter. That is done by sub-section (3) of section 5 of the Central Sales Tax Act. Sub-section (3) of section 5 of the Central Sales Tax Act extends the exemption to the purchase preceding to the purchase referred to in sub-section (1) of section 5 of the Central Sales Tax Act. In other words by virtue of sub-section (3) of section 5 of the Central Sales Tax Act, the purchase by the exporter is also exempted. But sub-section (3) of section 5 of the Central Sales Tax Act cannot be extended to the purchase of the said goods by the petitioner, since the purchase by the petitioner is not a purchase preceding the export-purchase, but is a purchase removed by one more step.

4. Of course the main question considered by the Tribunal was : whether the raw hides and skins and the tanned hides and skins are same goods or different ? It is not really necessary for us to express our opinion on this question since we have held that in any event the purchase of raw hides and skins by the petitioner cannot be brought within the purview of sub-section (3) of section 5 of the Central Sales Tax Act. (Of course we have held in State of A.P. v. Mohd. Basheer & Company 1989 72 STC 185; (1988) 7 APSTJ 231 that the tanned hides and skins and raw hides and skins are one and the same goods for the purpose of the Central Sales Tax Act).

5. The T.R.Cs. are accordingly fail and they are dismissed. No costs.

6. Petitions dismissed.

