
(1976) 02 AP CK 0012

In the Andhra Pradesh High Court

Case No : Tax Revision Case No's. 35 to 39 of 1975 and Writ Petition No's. 3163 and 4352 of 1974 and 223 and 4170 of 1975

Daita Suryanarayana and Co.

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 19-02-1976

Acts Referred:

Andhra Pradesh Entertainment Tax Act, 1939 — Section 6
Andhra Pradesh Entertainment Tax Rules, 1939 — Rule 27 A
Central Sales Tax Act, 1956 — Section 15(b)

Citation : (1977) 39 STC 500

Hon'ble Judges : S. Obul Reddi, C.J.; Madhusudan Rao, J

Bench : Division Bench

Advocate : S. Dasaratharama Reddi and S.R. Ashok, for the Appellant; A. Mahadev, for the Government Pleader for Commercial Taxes, for the Respondent

Final Decision : Dismissed

Judgement

S. Obul Reddi, C.J.—In this batch of tax revision cases and writ petitions, the main question raised by Sri S. Dasaratharama Reddi, the learned counsel appearing for the petitioners, is that the Sales Tax Appellate Tribunal went wrong in holding that Rule 27-A of the A.P. General Sales Tax Rules, as it stood prior to the amendment, does not entitle a dealer to refund by reason of the provisions of Section 6 of the A.P. General Sales Tax Act and the amended Section 15(b) of the Central Sales Tax Act.

2. The facts, as furnished in the appeals by the Tribunal, may be set out. The petitioners are all dealers in coconuts. They purchased watery coconuts and, in some cases, dry coconuts and sold them in the course of inter-State trade and commerce and claimed refund of the tax paid on those commodities under the A.P. General Sales Tax Act. Their claims were rejected in view of the amendments to Section 6 of the A.P. General Sales Tax Act and Section 15(b) of the Central Sales Tax Act. The amendments to the said provisions were deemed to have

come into force from the date of the commencement of the respective Acts. What the learned counsel, Sri Dasaratharama Reddi, contends is that though the two Sections have been amended giving them retrospective operation, Rule 27-A of the A.P. General Sales Tax Rules was not amended till 1st August, 1974 and, as all the transactions relate to the assessment years when Rule 27-A, before it was amended, was in force, the petitioners are entitled to the benefit of that rule. In this connection, the learned counsel also invited our attention to Section 10 of the Central Sales Tax (Amendment) Act, 1969 (Act 28 of 1969), to show that where any sale of goods in the course of inter-State trade or commerce has been effected during the period between the 10th day of November, 1964 and the 9th day of June, 1969 and the dealer effecting such sale has not collected any tax under the principal Act on the ground that no such tax could have been levied or collected in respect of such sale and no such tax could have been levied or collected if the amendments made in the principal Act by Act No. 28 of 1969 had not been made, then the dealer shall not be liable to pay any tax under the principal Act, as amended by Act No. 28 of 1969, in respect of such part of the turnover relating to such sale.

3. It is, therefore, necessary to read the relevant provisions to appreciate the points pressed by the learned counsel. Section 6 of the A.P. General Sales Tax Act, after amendment by Act No. 4 of 1974, reads :

Notwithstanding anything contained in Section 5, the sales or purchases of declared goods by a dealer shall be liable to tax at the rate and only at the point of sale or purchase specified against each in the Third Schedule on his turnover of such sales or purchases for each year irrespective of the quantum of his turnover in such goods ; and the tax shall be assessed, levied and collected in such manner as may be prescribed.

Provided that where any such goods on which a tax has been so levied are sold in the course of inter-State trade or commerce and tax has been paid under the Central Sales Tax Act, 1956, in respect of the sale of such goods in the course of inter-State trade or commerce, the tax so levied shall be reimbursed to the person making such sale in the course of inter-State trade or commerce, in such manner and subject to such conditions as may be prescribed.

4. Section 15 of the Central Sales Tax Act, as amended, reads:

Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely :-

(a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed three per cent of the sale or purchase price thereof and such tax shall not be levied at more than one stage ;

(b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of

inter-State trade or commerce and tax has been paid under this Act in respect of the sale of such goods in the course of inter-State trade or commerce, the tax levied under such law shall be reimbursed to the person making such sale in the course of inter-State trade or commerce in such manner and subject to such conditions as may be provided in any law in force in that State.

5. Rule 27-A of the A.P. General Sales Tax Rules may now be read as it stood before the amendment:

27-A. (1) Where any tax has been levied and collected u/s 6 in respect of the sale or purchase inside the State of any declared goods and such goods are subsequently sold in the course of inter-State trade or commerce, the tax so levied and collected shall be refunded to the person in the manner and subject to the conditions specified in sub-rules (2) to (4).

(2) The refund of tax referred to in Sub-rule (1) shall be made to the dealer who effected the first sale in the course of inter-State trade or commerce.

(3) Every application for refund under this rule shall be filed by the dealer claiming refund before the assessing authority having jurisdiction over his place of business within a period of three months from the end of the month in which he sold the goods:

Provided that the assessing authority may condone for reasons to be recorded in writing, any delay in the filing of such application.

(4) The burden of proving that a dealer is entitled to a refund under this rule shall be with the dealer claiming such refund.

6. What has to be now seen is whether this rule, in any way, gives the petitioners the right to have the tax levied and collected refunded for the reason that the declared goods, which they had purchased, were later sold in the course of inter-State trade and commerce.

7. We may now notice Section 10 of Act No. 28 of 1969 for appreciating the question involved;

(1) Where any sale of goods in the course of inter-State trade or commerce has been effected during the period between the 10th day of November, 1964 and the 9th day of June, 1969 and the dealer effecting such sale has not collected any tax under the principal Act on the ground that no such tax could have been levied or collected in respect of such sale or any portion of the turnover relating to such sale and no such tax could have been levied or collected if the amendments made in the principal Act by this Act had not been made, then, notwithstanding anything contained in Section 9 or the said amendments, the dealer shall not be liable to pay any tax under the principal Act, as amended by this Act, in respect of such sale or such part of the turnover relating to such sale.

(2) For the purposes of Sub-section (1), the burden of proving that no tax was collected under the principal Act in respect of any sale referred to in Sub-section

(1) or in respect of any portion of the turnover relating to such sale shall be on the dealer effecting such sale.

8. This Section on which reliance is placed by the learned counsel does not at all render any assistance to the petitioners. It speaks of a dealer effecting sales in the course of inter-State trade or commerce during the period specified therein and not collecting any tax under the principal Act on the ground that no such tax could have been levied or collected. That exemption was granted only in respect of sales effected during the period between 10th November, 1964 and 9th June, 1969, to only those who had not collected any tax under the Central Act on the ground that no such tax was leviable in view of the decision of the Supreme Court in *State of Mysore Vs. Yaddalam Lakshminarasimhaiah Setty and Sons*, That Section does not speak of any payment of tax under the local law. It only speaks of payment of tax under the Central Act. This position becomes absolutely clear when Section 6 of the Andhra Pradesh General Sales Tax Act after amendment is read along with Section 15 of the Central Act as amended.

9. The proviso to Section 6 of the State Act makes it obligatory that the declared goods must have suffered local tax and that such goods on which tax has been levied should be sold in the course of inter-State trade or commerce. What is refundable u/s 6 is not the tax payable under the Central Act, but the tax payable under the State Act. Section 10 of Act No. 28 of 1969 provides for exemption only in respect of the Central sales tax. There is no question of refunding any tax levied and collected under the State Act. Therefore, Section 10 has no application at all to the present cases. u/s 15(b) of the Central Act, the following conditions must be satisfied: (1) tax must have been levied under the State Act in respect of the sale or purchase inside the State on the declared goods; (2) such goods should have been sold in the course of inter-State trade or commerce ; and (3) tax should have been paid under the Central Act in respect of the sale of such goods in the course of inter-State trade or commerce. It is only then that the tax levied under the State Act shall be reimbursed to the person making such sales during the course of inter-State trade or commerce. The proviso to Section 6 of the State Act also imposes the same conditions. It also enjoins upon a dealer, who sold the declared goods in the course of inter-State trade or commerce, to pay tax under the Central Act in respect of the goods sold in the course of inter-State trade or commerce before he can claim refund or reimbursement of the tax paid under the State Act. Therefore, payment of the two taxes, both under the State and Central enactments, is a condition precedent before the benefit of reimbursement or refund can be availed by a dealer. Merely for the reason that he had paid the local tax, he will not be entitled to claim reimbursement or refund of the tax unless the conditions specified in the proviso to Section 6 of the State Act and in Clause (b) of Section 15 of the Central Act are satisfied. Rule 27-A cannot override the statutory requirements imposed by Section 6 of the State Act and Section 15 of the Central Act. It is true that Rule 27-A, as it stood before the amendment, speaks of refund of the tax to a dealer who effected the first sale in the course of inter-

State trade or commerce, without any reference to his payment of the Central sales tax. But, this rule, as has been stated by us, cannot have an overriding effect; and it is for that reason that the rule has since been amended so as to bring the amended rule in conformity with the requirements of the conditions specified in Section 6 of the State Act and Section 15 of the Central Act.

10. Sri Dasaratharama Reddi next sought to contend that those who collected the tax u/s 10 of Act No. 28 of 1969 got the benefit of refund u/s 15 of the Central Act but those, who did not collect the tax under the State Act in view of State of Mysore Vs. Yaddalam Lakshminarasimhaiah Setty and Sons, are denied the benefit. We are unable to say that there is any discrimination between those who collected and those who did not collect; they form two separate classes. The benefit of refund or exemption is sought to be given only to those who had collected the taxes under both the Acts. The object of Section 15 of the Central Act is not to exempt any dealer from the operation of the provisions of both the Acts. That being the case, we see no discrimination.

11. For the reasons recorded, we see no merit in any of the tax revision cases and writ petitions ; and they are accordingly dismissed with costs. Advocate's fee is fixed at Rs. 100 in each.

12. The petitioners in the writ petitions will be at liberty to raise the other questions before the Tribunal.