(1995) 01 AP CK 0004

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 322 of 1990

Deccan Leathers Limited — APPELLANT

Vs

State of Andhra Pradesh and Another — RESPONDENT

Date of Decision : 23-01-1995

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 6, 9, 9(1)
Central Sales Tax Act, 1956 — Section 15, 8, 8(5)

Citation : (1995) 1 AnWR 162 : (1995) 97 STC 598

Hon'ble Judges : T.N.C. Rangarajan, J;S.S. Mohammed Quadri, J

Bench : Division Bench

Judgement

Syed Shah Mohammad Quadri, J.—The short question that arises in this tax revision case is :

What is the rate of tax payable on the turnover of tanned hides and skins under the Central Sales Tax Act ?

2. The relevant provision which deals with the rates of tax under the Central Sales Tax Act, 1956, is section 8. It inter alia provides that a dealer who in the course of inter-State trade or commerce sells to a registered dealer other than the Government, goods of the description referred to in sub-section (3) shall be liable to pay tax under the Central Act at the rate of 4 per cent of his turnover. Sub-section (5) of that section empowers the State Government to reduce or exempt tax on such turnover if it is satisfied that it is necessary so to do in the public interest. That has to be notified by the State Government in the official gazette. In exercise of the powers conferred by sub-section (5) of section 8 of the Central Sales Tax Act, the State Government issued G.O.Ms. No. 890 Revenue(S) dated July 31, 1976. By the said Government Order, the rate of tax on the turnover of a dealer in the State of Andhra Pradesh in respect of sale of tanned hides and skins was prescribed as 2 per cent of the turnover. There is, however, one condition in the Government Order that the turnover should be subject to tax under the Andhra Pradesh General Sales Tax Act. There is another

provision under the Andhra Pradesh General Sales Tax Act which is relevant for this purpose and that is sub-section (1) of section 9. It provides that the State Government may by notification in the Andhra Pradesh Gazette make an exemption or reduction in the rate in respect of any tax or interest payable under the State Act, inter alia, on the sale and purchase of the specified goods. In exercise of this power conferred under sub-section (1) of section 9, the Governor of Andhra Pradesh issued G.O.Ms. No. 537 dated March 24, 1984 exempting with effect from April 1, 1984 from the tax payable by any dealer u/s 6 read with items 4, 5, 6, 7, 8 and 9 of the Third Schedule to the State Act which are liable to tax at the point of last purchase in the State. Item 9 reads as follows :

"9. Hides and skins :

(a) Untanned hides and skins.

(b) Tanned hides and skins (which were not subjected to tax as untanned hides and skins.)"

Perhaps this exemption was granted with a view to avoid refund of tax after its payment as required by clause (b) of section 15 of the Central Sales Tax Act.

3. A combined reading of the abovesaid G.O.Ms. No. 890 dated July 31, 1976 and G.O.Ms. No. 537 dated March 24, 1984 leads to the conclusion that under the Central Sales Tax Act the turnover on the sale of untanned hides and skins and tanned hides and skins is liable to tax at the rate of 2 per cent provided the sales were effected in respect of inter-State trade or commerce.

4. Now turning to the facts of this case, the dealer is the petitioner in this revision petition. For the assessment year 1984-85, the petitioner paid tax under the Central Sales Tax Act at the rate of 2 per cent. That was revised by the Deputy Commissioner in exercise of the revisional power u/s 20 of the said Act by enhancing it to 4 per cent on the sole ground that the turnover did not suffer tax under the Andhra Pradesh General Sales Tax Act. His appeal to the Tribunal against the order of the revisional authority having failed, he filed this tax revision case against the order of the Tribunal dated March 9, 1990 in T.A. No. 524 of 1989.

5. Sri Venkata Narayana, the learned counsel for the petitioner, contends that in view of the subsequent Government Order of the State Government, viz., G.O.Ms. No. 537 dated March 24, 1984, non-payment of the tax does not arise as the turnover stood exempted thereunder and therefore, the order of the revisional authority as confirmed by the appellate authority, that the tax should be paid at 4 per cent, is illegal. He has also brought to our notice the orders of the Tribunal reported in Nap Leathers Ltd. v. State of Andhra Pradesh (1992) 15 APSTJ 87, taking the view that the sales tax payable under the Central Act, was only at the rate of 2 per cent but not at 4 per cent. This order was passed, after the order under revision was pronounced by the Tribunal. The learned Government Pleader supports the order of the Tribunal in this case on the sole

ground that the tax under the Andhra Pradesh General Sales Tax Act has not been paid and that the rate under both the Acts should be the same. The argument of the learned Government Pleader would have been of some relevance had G.O.Ms. No. 537 not been issued by the Government which is effective from March 1, 1985. As the relevant assessment year is 1984-85, the orders issued in G.O.Ms. No. 537 would hold the field. Consequently, payment of tax under the Andhra Pradesh General Sales Tax, Act, cannot be taken as a condition precedent for payment of tax under the Central Sales Tax Act inasmuch as the State Government had exempted the sales tax in the said Government Order in respect of hides and skins - tanned as well as untanned under the Andhra Pradesh General Sales Tax Act. The Tribunal took the view that the petitioner is not entitled to the benefit of G.O.Ms. No. 890 as the assessee had not paid any tax under the Andhra Pradesh General Sales Tax Act. It also appears that the Tribunal was under the impression that the benefit of both the Government Orders cannot be availed at the same time. Further, as pointed out by the learned counsel for the petitioner, the Tribunal itself took a different view later. referred to above.

6. For the above reasons, we are unable to uphold the order of the Tribunal. The order under revision is accordingly set aside. The tax revision case is allowed, but having regard to the circumstances of the case, without costs.

7. Petition allowed.