

(1973) 08 AP CK 0008

In the Andhra Pradesh High Court

Case No : Letters Patent Appeal No. 199 of 1972

Govinda Raja Rice Mill

APPELLANT

Vs

The Union of India and Another

RESPONDENT

Date of Decision : 14-08-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1974) 34 STC 172

Hon'ble Judges : Sambasiva Rao, J; Ramachandra Rao, J

Bench : Division Bench

Advocate : A. Mahadev, for the Appellant; Central Government Standing Counsel and K.B.R. Krishna Murthy, for the 3rd Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Sambasiva Rao, J.—The question we have to answer in this Letters Patent appeal is not an easy one. It is whether the sale of rice, milled out of paddy, which has been subjected to purchase tax under the State law, is liable to be assessed under the Central Sales Tax Act, when it has taken place in the course of inter-State trade.

2. The facts of the matter are neither under dispute nor complicated. The appellant before us brought O.S. No. 17 of 1968 in the Court of the Subordinate Judge, Eluru, to set aside the order of assessment of the Assistant Commissioner of Commercial Taxes dated 16th May, 1967, and to recover a sum of Rs. 10,000 paid in pursuance of the said order. The assessment related to the year 1957-58, i.e., to the transactions which took place between 1st April, 1957, and 31st March, 1958. The plaintiff was a rice mill contractor and a dealer in paddy and rice. He milled some rice out of paddy which had already suffered sales tax under the Andhra Pradesh General Sales Tax Act. He exported the same to a place outside the State. Shorn of others which are not necessary for the disposal of this appeal, what happened was that the Commercial Tax Officer, by his order

dated 4th January, 1967, levied tax under the Central Act on the rice sold in the course of inter-State trade. That was affirmed by the Assistant Commissioner of Commercial Taxes by his order dated 16th May, 1967. The plaintiff paid Rs. 12,776.91 as per these orders on the sale of rice in question. He has filed the suit to recover the said amount with interest. He rested this claim on the contention that since he had paid the amount under a mistake of law he was entitled to recover it.

3. The second defendant, viz., the State of Andhra Pradesh, maintained in its written statement that the imposition of the tax was in accordance with the law. The Union of India, which was the first defendant, adopted that written statement. It, however, has not chosen to appear before us and contest this Letters Patent appeal.

4. The trial court held that by virtue of Sub-section (1A) introduced in Section 6 of the Central Act, by the Ordinance of 1969, the claim for the refund of the amount with interest thereon could not be sustained and the suit was not maintainable. It also found that the notices issued to the defendants were not valid in accordance with Section 80, C.P.C. In the result, the suit was dismissed without costs.

5. The plaintiff brought A.S. No. 437 of 1970 to this Court against the decision of the trial court. It was dismissed by our learned brother Chinnappa Reddy, J. The only question that was argued before him was that no tax was payable by reason of Section 8(2A) of the Central Act on the ground that the sale of rice, made out of paddy, which had already suffered tax is exempt from tax generally under the State Act. It was pointed out by the learned Judge that the said contention equated nonliability to tax with exemption from tax. In the present case, there was no such exemption. Such rice was made non-liaible to tax under the State Act. Consequently, Section 8(2A) of the Central Act is not attracted to the case and the sales are directly governed by Section 6(1A) of the Act. In that view, the appeal was dismissed with costs. This Letters Patent appeal is against that judgment of our learned brother.

6. Sri Mahadev for the appellant gave up the contention which he had raised before Chinnappa Reddy, J. He stated that the argument based on Section 8(2A) was advanced before the learned Judge without noticing that the said provision was made effective only from 1st October, 1958, by Notification No. G.S.R. 855 dated 23rd September, 1958, u/s 5 of the Central Act 31 of 1958. Since, in this case, the transactions under consideration took place between 1st April, 1957, and 31st March, 1958, Sub-section (2A) of Section 8 does not govern the case. Learned Counsel, however, endeavoured to impugn the assessment of sale on a different ground. It is like this : No doubt, by Act 28 of 1969, Sub-section (1A) was incorporated in Section 6 of the Central Act, which makes a dealer liable to pay tax under that Act on the sale of any goods effected by him in the course of inter-State trade or commerce notwithstanding that no tax would have been leviable, whether on the seller or the purchaser, under the sales tax law of the

appropriate State, if that sale had taken place inside the State. This new Sub-section was introduced to get over the difficulty created by the decision of the Supreme Court in *State of Mysore Vs. Yaddalam Lakshminarasimhaiah Setty and Sons*, That was why, that Sub-section was deemed always to have been inserted, with the result, that it must be deemed as being in force from 5th January, 1957, when the Central Act was brought into effect. Consequently, Section 6(1A) applies to the transactions in question and declares the liability of the plaintiff to pay tax under the Central Act, though no tax was leviable on the sale of this variety of rice under the State Act of Andhra Pradesh, if the sale had taken place inside the State. But, this merely declares the liability to tax; and one should travel to Section 8 to find out the actual rates of tax leviable on the sales in the course of inter-State trade or commerce. The amendments that were made to Section 8 were made effective only from 1st October, 1958, i.e., after the occurrence of transactions in question. So, in order to know the rates of tax leviable on these transactions, Section 8, as it stood before 1st October, 1958, should be looked into. Sub-section (1) has no application. Sub-section (2) governs the case. It, however, says that the tax payable thereunder shall be calculated at the same rates and in the same manner as would have been done if the sale had, in fact, taken place inside the appropriate State. In consequence, the assessing authority, in order to arrive at the rate of tax under this Sub-section, should have recourse to the law of the appropriate State, in this case, that of Andhra Pradesh. As per the sales tax law in force in the State of Andhra Pradesh from 15th June, 1957, to 31st March, 1958, "rice" is subjected to tax at the point of first purchase in the State at the rate of 3 naye paise in the rupee. That is seen from item 6 of Schedule III to the State Act. Item 5 prescribes purchase in the State. The explanation to the schedule, however, makes any subsequent purchase of rice converted from paddy, that has been subjected to tax under item 5 not liable to tax under item 6. Since the rice sold by the plaintiff in the course of inter-State trade is rice coming within the scope of the explanation, it is not liable to any further tax under the State law. This method of fixing the rates is adopted by the Central Act by virtue of Section 8(2). Consequently, though Section 6(1A) declares the liability of the plaintiff to tax, in effect no tax can be levied. Learned Counsel invited our attention to the observations of the Supreme Court, in *State of Mysore Vs. Yaddalam Lakshminarasimhaiah Setty and Sons*, that notwithstanding Section 6, the dealer may not be liable to pay any tax, if it comes within the provisions of Section 8, which takes away the liability. It is contended that the liability declared by Section 6(1A) is not absolute, but is subject to the other provisions of the Act. If the effect of the other provisions is to take away the liability, effect will have to be given to it. He, further, relied on a Bench decision of this Court in *State of A.P. v. O. Venkateswarlu and Bros.* [1967] 20 S.T.C. 340, where rice from paddy, which has not been subjected to tax, and rice from paddy, which has already been subjected to tax, have been recognised as two separate categories of rice. Consequently, the learned Counsel maintained that no tax under the Central law can be actually levied on the transaction in question, which deals with rice milled

out of paddy, which had already suffered tax under the State law.

7. This line of argument appears, on the first look, to be attractive and even plausible. But, on a closer scrutiny, it is found to be unacceptable.

8. The contention of the learned Counsel, if accepted, would defeat the purpose and intendment of Section 6(1A) of the Central Act. It declares in unequivocal terms that a dealer shall be liable to pay tax under the Act on the sales of any goods effected by him in the course of inter-State trade or commerce, notwithstanding that no tax would have been leviable (whether on the seller or the purchaser) under the sales tax law of the appropriate State, if that sale had taken place inside the State. Sale of any goods in the course of inter-State trade or commerce is thus made liable to Central tax. Such liability exists, even if no tax either on the sale or on the purchase of the goods is leviable under the State law if the sale has taken place inside the State. The non obstante clause, which follows the declaration of the liability under the Central law on sales of any goods makes the intendment of the Parliament very clear. In so far as the liability to the Central tax is concerned, it is immaterial whether the State law levies any tax on the sale or purchase of the goods or not. In addition to the non obstante clause, the expression "sale of any goods" is of very wide import and permits no exceptions, exemptions or exclusions.

9. We must also remember the background in which Sub-section (1A) has come to be inserted in Section 6. As the learned Counsel for the appellant has submitted, the insertion has been made by the Parliament to get over the consequences of the then existing law as interpreted by the Supreme Court in *State of Mysore Vs. Yaddalam Lakshminarasimhaiah Setty and Sons*, The majority view and consequently the view of the court in that case was that the expression "levied" in Section 9(1) of the Central Act referred to the same expression in Section 5(3)(a) of the State Act and so the Central Act had not made a departure in the manner of levy of tax of specified goods which were taxed only at a single point under the State Act. Then it was observed that "if any such radical departure was intended the Central Act would have expressly stated so". With the result, the court declared that the liability u/s 6 of the Central Act was not absolute and was subject to the other provisions of the Act. If the dealer comes within the proviso to Section 8(1), then despite the liability declared u/s 6, he would not be liable to pay any tax. This led to the insertion of the new Sub-section (1A) in Section 6 of the Act. Indeed the President promulgated an Ordinance called the Central Sales Tax (Amendment) Ordinance, 1969, to get over the difficulty created by the aforesaid decision of the Supreme Court and the Parliament later passed an Amendment Act inserting the new Sub-section (1A). The observation of the Supreme Court in *State of Mysore Vs. Yaddalam Lakshminarasimhaiah Setty and Sons*, that "if any such radical departure was intended the Central Act would have expressly stated so" is very pertinent to understand the amplitude of Sub-section (1A). By virtue of the new Sub-section, a radical departure was intended and declared by the Parliament in

express terms making sale of any goods in the course of inter-State trade or commerce liable to tax under the Central law.

10. Sri Mahadev, however, contended that the liability to tax under the Central Act only seemingly exists, but in so far as this particular variety of rice is concerned, it is not in effect and reality leviable. In support of this argument, he relied upon Sub-section (2) of Section 8 as it originally stood before 1st October, 1958. He conceded that the original Sub-section (1) has no application to these transactions and, consequently, only Sub-section (2) governs them. That Sub-section provided that the tax payable on any goods sold in the course of inter-State trade or commerce shall be calculated at the same rate and in the same manner as would have been done if the sale had, in fact, taken place inside the appropriate State. Therefore, in the submission of the learned Counsel, the State Act, as it then obtained, should be invoked to fix the liability to tax and to fix the rate thereunder. Schedule III to the State Act, which was in force from 15th June, 1957, to 31st March, 1958, made rice, as per item 6, liable to tax at the rate of 3 naye paise in the rupee at the point of first purchase in the State. The explanation to the schedule said that where a tax has been levied in respect of purchase of paddy under item 5, any subsequent purchase of rice converted from such paddy is not liable to tax under item 6. While fairly conceding that, in the light of the language of Section 6(1A) of the Central Act, it is immaterial whether the tax is leviable under the State law at the purchase point or the sale point, the learned Counsel, nevertheless, maintained that no tax is leviable on rice converted from paddy which had already been subjected to tax as per item 5. Rice, according to him, was categorised by such schedule into two varieties and tax is leviable only on that variety of rice, milled from paddy, which had not suffered tax. Under the schedule the other variety of rice is not liable to any tax. By virtue of Section 8(2) of the Central Act, even if the second category of rice was sold in the course of inter-State trade or commerce, it continues to be non-liable to Central tax as well.

11. This argument cannot be accepted for more than one reason. In the first place, the explanation to the 3rd Schedule to the State Act, as it then existed, cannot be allowed to nullify a clear provision made by the Parliament in Section 6(1A). When the intendment of the Parliament in enacting Sub-section (1A) is clear, the explanation to Schedule III of the State Act cannot override that intendment. Secondly, even Section 8(2) itself clearly states that for the purpose of making any calculation as per the earlier part of the same Sub-section, any dealer shall be deemed to be a dealer liable to pay sales tax of the appropriate State notwithstanding that he, in fact, may not be so liable under that law. Sub-section (2) of Section 8 will have to be read in its entirety and when it is understood in the light of its later portion, it will be seen that it is not inconsistent with what is contained in Section 6(1A). Despite the non-liability of the dealer to pay tax under the State law, his liability to pay tax will have to be calculated at the same rate and in the same manner as would have been done if the transaction has taken place inside the State. It is reasonable to infer from

this that the Parliament intended the same rate prescribed under the State law to be adopted for calculating the Central tax, the liability of paying the same having been declared under Sub-section (1A) of Section 6. Item 6 of Schedule III prescribed three naye paise in the rupee as the tax payable on rice at the first purchase in the State. The explanation has only a limited object and that is to make rice converted from paddy that had been subjected to tax non-labile to further tax for the purposes of assessment under the State law. In view of the categorical declaration contained in Section 6(1A) and reading Section 8(2) as it originally stood as a whole, we are of the opinion that it would be unreasonable to import this explanation into the implementation and enforcement of the Central Act. If that is done, manifestly the very purpose of Section 6(1A) will be defeated and nullified. Rules of interpretation of statutes are well-defined. Harmonious construction will have to be laid on the different provisions of a statute. Once the intention of the Parliament is clear and known, a construction which is consistent with that intention must be laid on the provisions of the Act. To do otherwise would be contravening the well-known rules of construction of statutes.

12. There is another aspect which should be borne in mind. If the contention put forward by the learned Counsel is to be accepted it would lead to a very anomalous result. Rice, which has been extracted from paddy, which had not suffered tax under item 5 of Schedule III of the State law, is subjected to tax of three naye paise in the rupee at the point of first purchase in the State. When the same rice is sold in the course of inter-State trade or commerce, it will be liable to Central tax at the same rate. But, rice, which has been converted from paddy, which had suffered tax, would escape this liability, thus leading to hostile discrimination and unreasonable classification. There is no reason to suppose that the Central Act has contemplated such discrimination. It is well-known that if there are two views possible, that view and that construction, which keeps the provision in the statute in accordance with the Constitution should be accepted. We are, therefore, of the view that Section 6(1A) read with Section 8(2) of the Central Act should be given their plain and natural meaning, which is also consistent with their constitutionality. We may reinforce this view of ours by citing an illustration. Supposing, for argument's sake, that the explanation, instead of making the rice mentioned therein non-labile to tax makes it liable to, say, one naya paisa in the rupee. According to the argument advanced, if such rice is sold in the course of inter-State trade or commerce, Central tax can be levied only at the rate of one naya paisa, while other rice is subjected to tax of 3 naye paise in the rupee. This is clear hostile discrimination. This is different in the case of the State law, because under it, the paddy has already been subjected to the same rate of tax and so rice converted therefrom is not subjected to further tax. In the case of rice converted from paddy, which has not suffered tax, tax is for the first time levied at 3 naye paise at the point of first purchase. With the result, rice of whatever category goes through the same rate of tax either in the form of paddy or in the form of rice. The contention advanced

for the appellant would pervert this position and make it inequitable and unequal under the Central law. This result should not be permitted to emerge.

13. In order to contend that when the State law has itself categorised rice into two distinct categories, the existence of two varieties of rice, which are subjected to varying rates of tax, cannot be avoided, the learned Counsel has relied on a Bench decision of this Court in *State of Andhra Pradesh v. O. Venkateswarlu & Bros.* [1967] 20 S.T.C. 340. It is true that while dealing with the sale of rice in the course of inter-State trade, the learned Judges pointed out that rice from paddy, which had not been subjected to tax and rice from paddy, which had been already subjected to tax, had to be taxed at different rates and with respect to each category, tax could be said to be generally at that rate. But, the case was decided before Sub-section (1A) was introduced in Section 6 of the Central Act. Further, what was being considered was the scope of Section 8(2A) of the Central Act read with item 66(b) of Schedule I of the Andhra Pradesh Act. The question of applying Section 6(1A) read with Section 8(2) of the Act did not arise in that case. In fact, the Division Bench relied on *State of Mysore Vs. Yaddalam Lakshminarasimhaiah Setty and Sons*, while deciding the case before them. Therefore, this decision is not of any avail to the appellant in this case. At the same time, the observation made by the Division Bench that where two interpretations are possible, one against the constitutionality of a provision and the other in favour of sustaining it, the latter interpretation should be preferred is a well-established rule of interpretation and should be borne in mind.

14. We may here refer to a few cases which were decided after the advent of Section 6(1A) in the Central Act. The Supreme Court itself had an occasion to consider the effect of the Central Sales Tax (Amendment) Ordinance, 1969, which first gave birth to that Sub-section in *State of Kerala v. Joseph and Co.* [1970] 25 S.T.C. 483 (S.C.) The Supreme Court held that the effect of the Ordinance is to supersede the judgment of the court in *Yaddalam Lakshminarasimhaiah Setty's* case [1966] 16 S.T.C. 231 (S.C.). The court proceeded to observe :

It is now made clear that even if no tax was leviable under the general sales tax law of the State in respect of intra-State transactions of sale, tax will be leviable on sale of goods effected by a dealer in the course of inter-State trade according to the sales tax law of the appropriate State. By Section 9(2) of the Central Sales Tax Act as modified, it is enacted that the authorities empowered to assess, reassess, collect and enforce payment of any tax under the general sales tax law of the State shall be entitled, on behalf of the Government of India, to assess, reassess, collect and enforce payment of tax by a dealer under the Act as if the tax payable by such a dealer under the Act was tax payable under the general sales tax law of the State and, for this purpose, they may exercise all or any of the powers they have under the general sales tax law of the State. Thereby the procedural law prescribed by the general sales tax law of the State applies in the matter of assessment, reassessment, collection and enforcement of payment of

tax under the Central Sales Tax Act, but the liability to pay is determined by the provisions of the Central Sales Tax Act.

15. It is thus very clear from the authoritative pronouncement of the Supreme Court that though the procedural law prescribed by the State Act applied in the matter of assessment, reassessment, collection and enforcement of payment of tax under the Central Act, the liability to pay is determined by the Central Act itself. The Central Act, as amended, makes it clear that even if no tax is leviable under the State law, tax will none the less be leviable on the sale of goods effected in the course of inter-State trade according to the sales tax law of the State. In that case, the Supreme Court was considering the liability of the sale of eggs to Central sales tax. Under the State law, eggs were not taxable except at the last point of purchase in the State. The court set aside the decision of the High Court, which had held that sales of eggs were not taxable even in the course of inter-State trade, since they were not taxable under the State law except at the last point of purchase. The same result should follow in the case before us also. Item 6 of Schedule III to the State Act makes rice generally liable to tax at a particular rate. And that rate should be adopted for fixing the rate of tax under the Central Act, though some kinds of rice are made non-available to tax for the purpose of levying State tax. It should be noted that item 6 in Schedule III refers to "rice" as such and, therefore, all kinds of rice come within that genus, though for the purposes of levying State tax a particular kind is made non-labile.

16. In *Basappa & Bros. v. Deputy Commissioner of Commercial Taxes* [1971] 27 S.T.C. 241, a Bench of the Mysore High Court repelled the argument that the aforesaid decision of the Supreme Court, i.e., *State of Kerala v. Joseph and Co.* [1970] 25 S.T.C. 483 (S.C.) made no reference to Sub-section (2A) of Section 8 and, therefore, that decision does not apply to matters which arose under that Sub-section and held that though the said decision made no reference to Sub-section (2A) of Section 8, the High Court was bound by the law as laid down by the Supreme Court. On this basis, the learned Judges rejected the contention that notwithstanding the amendment of the Central law in 1969, all sales by a dealer in the Mysore State effected in the course of inter-State trade or commerce were exempt from tax by virtue of Section 8(2A) of the Act.

17. In *Commissioner of Sales Tax v. Bhagwandas Rikhiram* [1972] 29 S.T.C. 541, a Bench of the High Court of Madhya Pradesh observed that the combined effect of Section 6(1A) and Section 8(2A) was that all sales, which were exempt from sales tax except under Sections 10 and 12 of the State Act, were subject to Central sales tax and were liable to the rate of tax prescribed u/s 8(2) of the Act, notwithstanding the fact that if the sales would have been effected in the State, no tax would have been levied. The same principle emerges from a combined reading of Section 6(1A) and Section 8(2), as it originally stood.

18. For these reasons, we hold that the order of the Assistant Commissioner of Commercial Taxes made in A.S. 16/67-68 dated 16th May, 1967, confirming the

order of the Commercial Tax Officer, Eluru, dated 4th January, 1967, imposing tax on the transactions under the Central Sales Tax Act is correct and is in accordance with that Act as it stands amended. Consequently, the plaintiff-appellant is not entitled to any of the reliefs he has sought in the suit.

19. Some discussion has taken place before us as to the maintainability of the suit. It may be noted that this point was not decided by our learned brother in first appeal. In view of the conclusion we have reached on the merits of the plaintiff's claim it is not necessary to decide that question and we are not expressing any opinion thereon.

20. In the result, the Letters Patent appeal fails and is accordingly dismissed. Having regard to the circumstances of the case, we direct the parties to bear their own costs of the Letters Patent appeal.