(1988) 06 AP CK 0019

In the Andhra Pradesh High Court

Case No : T.R.C. No. 128 of 1985

International Packaging Industries APPELLANT

Vs

State of Andhra Pradesh RESPONDENT

Date of Decision : 27-06-1988

Acts Referred:
Central Sales Tax Act, 1956 — Section 5(3)

Citation : (1990) 76 STC 39

Hon'ble Judges : Y. Bhaskara Rao, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : S. Dasaratharama Reddi, for the Appellant; The Government Pleader for Commercial Taxes, for the Respondent

Judgement

B.P. Jeevan Reddy, J.—The only question that arises in this T.R.C. is whether the petitioner, a manufacturer of gunnies, is entitled to claim exemption u/s 5(3) of the Central Sales Tax Act, 1956, in respect of the turnover relating to sale of gunnies in favour of three firms, viz., M/s. Indian Barytes and Chemicals, M/s. Ramalingeswara Pulverising Mills and M/s. Star Barytes, Cuddapah (Private) Limited. At the relevant time, the export of barytes was canalised and only M.M.T.C. or mine-holders holding lease as on 31st March, 1978, were permitted to export. Even the mine-holders holding lease as on 31st March, 1978, were entitled to export only to the extent of their production and subject to floor-price-mechanism - vide Public Notice No. 16 dated 2nd February, 1979, issued by the Ministry of Commerce, Civil Supplies and Co-operation, Department of Commerce, Government of India. The barytes filled in the gunnies sold by the petitioner was exported by K. Obul Reddy (in the case of gunnies sold to M/s. Indian Barytes and Chemicals), C. M. Ramanatha Reddy (in the case of gunnies sold to M/s. Ramalingeswara Pulverising Mills) and Mohd. Rahamatullah [in the case of gunnies sold to M/s. Star Barytes, Cuddapah (Private) Limited]. The petitioner''s claim for exemption was rejected by all the authorities including the Tribunal on the ground that the export was not by the firms/company to whom the petitioner sold the gunnies but by other individuals and presumably there was a sale by the said firms/company to the said individual exporters. This view is challenged by the learned counsel for the petitioner before us.

2. It is argued that since the persons who exported, namely, K. Obul Reddy in the case of M/s. Indian Barytes and Chemicals, C. M. Ramanatha Reddy in the case of M/s. Ramalingeswara Pulverising Mills, are partners of those respective partnership firms, it must be deemed that they exported the barytes as agents of and on behalf of those firms. Similar argument was advanced with respect to Mohd. Rahamatullah vis-a-vis M/s. Star Barytes, Cuddapah (Private) Limited.

3. We find it not possible to agree. Admittedly the gunnies were sold by the petitioner not to the individuals aforesaid but to the two partnership firms and the Private Limited Company referred to above. Now it cannot be presumed that the individuals who exported the barytes did so as agents of or on behalf of the said firms. Merely because K. Obul Reddy was a partner in the firm M/s. Indian Barytes and Chemicals or that C. M. Ramanatha Reddy was a partner in M/s. Ramalingeswara Pulverising Mills, it does not follow that the said firms became the mine-holders. It would not be right to confuse the firm with the partner or to treat them as synonymous in the context. It is not the case of the petitioner that the said firms were the mine-holders nor is there anything to show that the mining rights of the said partners were placed in the firm and made the property of the firm. Moreover, this argument has no relevancy in the case of Mohd. Rahamatullah vis-a-vis M/s. Star Barytes, Cuddapah (Private) Limited. It is a private limited company and not a firm.

4. The learned counsel for the petitioner strongly relied upon the circumstance that the said two firms and the private limited company issued H forms as provided under rule 12(10) of the Central Sales Tax (Registration and Turnover) Rules, 1957, to the petitioner. It is pointed out that the issuance of these H forms shows that the purchaser of the gunnies has purchased them for export. Mere issuance of H forms by itself is not sufficient to bring the case within the four corners of section 5(3) of the Act. It must further be proved that the goods purchased were actually exported by the purchaser. In this case no such proof is forthcoming. The relevant facts must be proved by the person who claims exemption or seeks a particular benefit. It is not a matter of presumption. As stated above, there is no evidence that export was effected by the firms/ company which purchased gunnies from the petitioner or that the persons who actually exported barytes were acting as agents of and on behalf of the respective firms and company.

5. For the above reason, the T.R.C. fails and is dismissed. No costs. Advocate''s fee Rs. 150.

6. Petition dismissed.

