(1965) 03 AP CK 0007

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 21 of 1964

J. Shamdas — APPELLANT

Vs

State of Andhra Pradesh — RESPONDENT

Date of Decision : 31-03-1965

Acts Referred:
Andhra Pradesh General Sales Tax Act, 1957 — Section 8, 9(1)

Citation : (1967) 19 STC 412

Hon'ble Judges : Sharfuddin Ahmed, J;Krishna Rao, J

Bench : Division Bench

Advocate : T. Anantha Babu, for the Appellant; D.V. Sastry, for Third Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Sharfuddin Ahmed, J.—The short question that requires determination in this tax revision case is whether the levy of sales tax on zarda under the Andhra Pradesh General Sales Tax Act (hereinafter called the Act) is according to law.

2. The assessee is a partnership concern having three places of business in the twin cities of Hyderabad and Secunderabad. They are general merchants who deal in general goods, cotton yarn etc. In regard to their turnover of Rs. 24,538.40 representing the sale of zarda which is an Urdu word for "chewing tobacco", they were subjected to sales tax for the assessment year 1961-62, i.e., for the period from 1st April, 1961 to 31st March, 1962. The assessee objected to the levy of tax on zarda on the ground that zarda is a tobacco product and it falls under item 7 of Schedule 5 of the Act. The Commercial Tax Officer, however, did not accept that contention. The matter was carried in appeal to the Assistant Commissioner of Commercial Taxes who held that as zarda manufactured by the assessee had not suffered additional excise duty, the levy of sales tax was justified. He accordingly dismissed the appeal. The assessees then took up the matter to the Sales Tax Appellate Tribunal, but even there they were unsuccessful. The revision is directed against this order.

3. The facts beyond dispute are that zarda according to its dictionary meaning and in common parlance is nothing but a variety of chewing tobacco. The chemical analysis of the two brands of zarda indicates that there is 86.2 per cent, of tobacco in one brand and 87.8 per cent, in the other-the other contents being moisture, essential oil and silver in minute quantity. Having regard to the substantial percentage of tobacco contents, zarda can certainly be held to be a tobacco product. In that event it comes within the purview of Section 8 of the Act which reads as under :

Subject to such restrictions and conditions as may be prescribed, including conditions as to licences and licence fees, a dealer who deals in the goods specified in the Fifth Schedule shall be exempt from tax u/s 5 in respect of such goods.

4. The goods specified in Schedule 5 were : salt, electric energy, motor spirit and toddy. Subsequently by a notification, in exercise of powers vested in Sub-section (1) of Section 9 of the Act, the Government of Andhra Pradesh issued G.O. Ms. No. 2328, Revenue, dated 13th December, 1957, exempting "tobacco and all its products" from tax under the Act with effect from 14th December, 1957, along with sugar and all varieties of textiles. Later by the Amending Act 3 of 1958, Schedule 5 of the Andhra Pradesh Act 6 of 1957 was amended and under item 7, "tobacco and all its products" are exempted from tax u/s 8 of the said Act. The amendment came into effect from 1st April, 1958, in accordance with G.O. Ms. No. 566, Revenue, dated 28th March, 1958. Admittedly subsequent to it no rule was made restricting the operation of the exemption or imposing any limitation on the relief granted under the Act. So that if tobacco is considered in its dictionary meaning, there could be no difficulty in holding that zarda being a variety of chewing tobacco, will fall within the exemption. It is to be noted that tobacco has not been defined under the Act nor there is any indication to show that tobacco has to be construed in accordance with the definition given under any other enactment. Accepting the dictionary meaning of tobacco and zardat therefore, there is no scope for the contention that zarda is not exempted from levy of sales tax.

5. The Sales Tax Appellate Tribunal, however, with reference to the historical background which resulted in the notification exempting tobacco and all its products from levy of sales tax, arrived at the conclusion that as zarda has not suffered Central excise duty after production, it cannot be exempted from tax under the Act, as under Schedule 5, item 7, only those goods that have suffered Central tax are exempt. It has referred to the case of K. N. Krishnaiah Setty & Sons v. Deputy Commercial Tax Officer, Hindupur [1963] 14 STC 1 where dealing with tobacco stalks, it was observed that the expression "tobacco and all its products" occurring in Schedule 5 of the Andhra Pradesh General Sales Tax Act, 1957, as amended by Andhra Pradesh General Sales Tax (Amendment) Act, 1958, should be construed in the light of the definition of "tobacco" contained in the Additional Duties of Excise (Goods of Special Importance) Act, 1957. As we

have observed above, there is nothing in the Act either explicit or implied to sustain this restricted construction. Obviously, it is with reference to the statement of objects and reasons which led to the notification and the subsequent amendment of the Act, that is with reference to the circumstances under which the enactment was made, that the conclusion has been reached. It is not necessary to make a detailed reference to the facts which led to the notification and the subsequent amendment of the Act; suffice to say that by the Additional Duties of Excise (Goods of Special Importance) Act, 1957, the Union Government imposed additional duties of excise on textile, sugar and tobacco in replacement of sales tax levied by the various States. The Act came into force on 24th December, 1957. To avoid double taxation, the State Government in exercise of its powers u/s 9 issued a notification exempting from payment of tax all goods in respect of which additional duties of excise are leviable by the Central Government with effect from 24th December, 1957. Later on, the Act itself was amended by addition of textile, sugar and tobacco and all its products to Schedule 5. It is with reference to this background the intendment of the Legislature in respect of the amendment was held to be of the same import as expressed in the Additional Duties of Excise (Goods of Special Importance) Act, 1957.

6. Even on this construction, zarda cannot be held exigible, to tax ; for under the Additional Duties of Excise (Goods of Special Importance) Act, 1957, the expression "tobacco" is to have the same meaning as it is assigned to it in the First Schedule to the Central Excises and Salt Act, 1944. Item 9 of the First Schedule to the Central Excises and Salt Act, 1944, defines "tobacco" as under :-

Tobacco means any form of tobacco whether cured or uncured and whether manufactured or not and includes the leaf, stalks and stems of the tobacco plant, but does not include any part of tobacco plant while still attached to the earth.

7. By Section 2, Clause (1)(1), the word "manufacture" in relation to tobacco is to include the preparation of cigarettes, cigars, cheroots, beedies, cigarette of pipe or hookah tobacco, chewing tobacco or snuff. The definition is, therefore, comprehensive to cover tobacco and all its products. However, under the Additional Duties of Excise (Goods of Special Importance) Act, 1957, only certain class of unmanufactured and manufactured tobacco have been subjected to additional duty. Zarda does not fall within any category enumerated under item 9 of the First Schedule. Therefore, it was a commodity on which additional duty was not imposed in accordance with the Additional Duties of Excise (Goods of Special Importance) Act, 1957. The notification referred to above did not provide nor was it laid down in Krishnaiah Setty & Sons v. Deputy Commercial Tax Officer, Hindupur [1963] 14 STC 1 that exemption could only be claimed in respect of goods on which additional duty of excise has been levied. In fact, while construing the effect of the proviso to the notification mentioned above, the Supreme Court in Innamuri Gopalam and Ors. v. State of Andhra Pradesh [1963] 14 S.T.C. 742 AP came to a definite conclusion that as the proviso could

not apply to cases where additional duty of excise was not leviable, the operation of the exemption was unaffected by the proviso and the appellants in the case were entitled to relief from sales tax granted by the notification.

8. Thus in any view of the matter we are of opinion that zarda is not exigible to sales tax by virtue of the Amending Act 3 of 1958 of Schedule 5 of the Andhra Pradesh General Sales Tax Act.

9. The revision is accordingly allowed. No costs.