

(1970) 11 AP CK 0009

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5449 of 1968 and T.R.C. No. 16 of 1969

K. Vadivelu Chetty

APPELLANT

Vs

Commercial Tax Officer and Another

RESPONDENT

Date of Decision : 12-11-1970

Acts Referred:

Central Sales Tax Act, 1956 — Section 15, 5

Citation : (1973) 30 STC 176

Hon'ble Judges : Ramachandra Raju, J;Gopal Rao Ekbote, J

Bench : Division Bench

Advocate : S. Dasaratharama Reddy, in W.P. No. 5449 of 1968 and The Principal Government Pleader in T.R.C. No. 16 of 1969, for the Appellant; P. Venkatarami Reddy, for the Government Pleader for Tax Cases and K. Subrahmanya Reddy, for the Respondent

Final Decision : Dismissed

Judgement

Gopal Rao Ekbote, J.—The writ petition and the tax revision case raise a common question of law. They can, therefore, be disposed of by a common judgment.

2. In order to appreciate the point raised, we would refer to the facts as they appear in the writ petition.

3. The petitioner-firm carries on business as commission agents in jaggery and groundnuts at Chittoor. The firm is a registered dealer under the A. P. General Sales Tax Act. For the assessment year 1967-68 the petitioner purchased groundnuts within the State, He then sold the same in the course of inter-State trade. The petitioner filed a return. He claimed before the assessing authority at the time of assessment that on the sales within the State he is not liable to tax u/s 15(b) of the Central Sales Tax Act read with the proviso to Section 6 of the Andhra Pradesh General Sales Tax Act on that part of the turnover which comprised the subsequent transactions of sales in the course of inter-State transactions.

4. The assessing authority rejected that contention and assessed the petitioner to tax even in regard to these transactions. It is this order of assessment that is now challenged in this writ petition.

5. The principal contention which was raised before the assessing authority has been now raised before us. The contention was that u/s 15(b) of the Central Sales Tax Act read with the proviso to Section 6 of the A. P. General Sales Tax Act no tax can be levied on transactions of sale within the State if it is found that the goods were subsequently sold in the course of inter-State sales.

6. In order to appreciate the implication of this contention it is necessary to read Section 15 of the Central Sales Tax Act which is as follows:

15. Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State.-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, the tax so levied shall be refunded to such person in such manner and subject to such conditions as may be provided in any law in force in that State.

7. A careful and close analysis of this section would reveal that certain restrictions and conditions in regard to tax on sale or purchase are placed in so far as they relate to declared goods, when the transaction takes place within the State. Thus, the first two restrictions are that the tax payable on such transactions on declared goods inside the State shall not exceed 3 per cent, of the sale or purchase price thereof and secondly, such State tax shall not be levied at more than one stage. In this case, we are not concerned with the abovesaid two restrictions under Clause (a) of that section. In so far as Clause (b) of Section 15 is concerned, it seems to us to be very clear when it says that where tax has been levied in regard to a transaction inside the State relating to any declared goods and where such goods, that is to say, goods on which tax has been levied by the State, are sold in the course of inter-State trade or commerce, the tax so levied by the State shall be refunded to such person in such manner and subject to such conditions as may be provided in any law in force in that State.

8. The State Legislature u/s 6 of the State Act made a provision for refund. Proviso to Section 6 of the A. P. General Sales Tax Act reads as follows :

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, the tax so levied shall be

refunded to such person, in such manner and subject to such conditions as may be prescribed.

9. Section 6 relates to tax in respect of declared goods which enjoins that 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.

10. What becomes clear from Section 6 is that declared goods are taxable at the rates mentioned in the schedule but only at one stage as is enjoined in Section 15(a) of the Central Sales Tax Act. Section 6 in effect complies with the restrictions and conditions placed upon the power to levy tax in respect of declared goods by the State Government. As seen already the proviso to Section 6 provides for refund in cases where the goods on which tax has been so levied are sold in the course of inter-State trade or commerce. The language of the proviso is in accord with the language of Section 15(b) of the Central Sales Tax Act.

11. Under Rule 2 7-A of the A. P. General Sales Tax Rules the manner in which the refund can be made, the persons to whom such refund can be made and the conditions on which such refund can be made are prescribed. It enjoins that,

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.

12. A reading of this rule makes it clear that the person who has paid the tax has to claim the refund provided he files an application for refund before the assessing authority having jurisdiction over the place of business of such person within a period of 3 months from the end of the month in which he sold the goods. The application shall be made by the dealer who first effected the first

sale in the course of inter-State trade and commerce. The burden of proving all the required things to claim refund lies on the dealer.

13. What becomes clear from the provisions we have read above is that the declared goods merely because they are declared goods are not immune from taxation. The transactions in declared goods are amenable to sales tax under the main provisions of Section 6. Such transactions can be taxed only at one point and at not more than the rate of 3 per cent. In cases where the goods on which such tax has been levied are sold in the course of inter-State trade or commerce the amount of tax that has been paid to the State Government shall be refundable to the dealer who has entered into the transaction in the course of inter-State trade or commerce provided he fulfils the requirements of Rule 27-A.

14. It was contended by Sri Dasaratharama Reddy, the learned counsel for the petitioner, that the difference in the language which is patent in Section 6 and Rule 27-A points in the direction that if the dealer brings to the notice of the assessing authority that the transactions in regard to declared goods although took place within the State, subsequently the goods have been sold in the course of inter-State trade or commerce, then no tax can be levied under the State law on the transactions which took place within the State. We do not find any substance in this contention. It is no doubt true that while Section 6 of the Act used the word "levied", Rule 27-A used the words "levied and collected", but on that account it will not be proper to say that there is a difference between the two provisions. In the context in which the term "levied" is used in Section 6, it can only mean the tax imposed, assessed and collected. The same meaning is conveyed when Rule 27-A used the words "levied and collected". The use of the word "collected" in Rule 27-A cannot be said to restrict the meaning of the word "levied" in Section 6. It merely brings out what was implicit in Section 6. In the context of refund, the, word "levied" appearing in Section 6 and the words "levied and collected" appearing in Rule 27-A clearly mean not only the imposition and quantification of a tax but also the collection. Unless the tax is calculated and collected it is difficult to conceive the case where the refund can be granted. The contention that the word "levied" appearing in Section 6 should be read as "leviable" has no basis whatsoever. The language of proviso to Section 6, the language of Section 15(b) of the Central Sales Tax Act and the language of Rule 27-A is so patent that there is no scope for any such argument. If once it is remembered that under the main section G, even a transaction of sale or purchase in declared goods is exigible to tax under the State law and refund of the tax thus levied can be made only when the goods on which the tax is paid are sold subsequently in the course of inter-State commerce and trade there remains no scope for interpreting the word "levied" as "leviable".

15. Reliance was placed in support of this construction on the following two decisions: Shameem & Co., Nellore v. Deputy Commercial Tax Officer (1967) 1 An. W.R. 215 and A.K.D. Alaga Raja v. State of Madras [1963] 14 S.T.C. 794.

16. It is no doubt true that in Shameem & Co., Nellore v. Deputy Commercial Tax

Officer (1967) 1 An. W.R. 215, the learned single Judge, following A.K.D[1963] 14 S.T.C. 794. Alaga Raja v. State of Madras" , held that the phrase "where the tax has been levied" means where the tax has become leviable. But, if the judgment is carefully read, it will be plain that the learned Judge has categorically held that "the liability under the Andhra Pradesh General Sales Tax Act arises the moment there is a transaction in which the petitioner was the last purchaser of declared goods, and that liability is not affected by reason of the benefit of refund allowed by Section 15(b) of the Central Sales Tax Act or proviso to Section 6 of the Andhra Pradesh General Sales Tax Act. They only provide for refund in the event of any part of these goods becoming the subject of inter-State sale subsequently." At more than one place, the learned Judge asserted that the assessing authority has to levy the tax and collect it as per the provisions of the A. P. General Sales Tax Act and if the conditions of Rule 27-A are satisfied, the assessee is entitled to claim refund. The learned Judge observed :

There is nothing either in the Act or in the Rules which permits the contention that the tax itself cannot be levied or collected, because on fulfilment of certain conditions which entitle the assessee to have the tax refunded.

17. It is only in the light of these various observations made that the learned Judge was unable to accept the argument that the assessment order dated 18th May, 1961, was vitiated by an error of jurisdiction or by any error of law apparent on the face of the record.

18. In spite of the abovesaid observations and the conclusions, the learned Judge observed :

As already stated, the department is no doubt entitled to collect the tax u/s 6, but if the turnover as the last purchaser is but the turnover of the inter-State sales, the tax has to be refunded to the petitioner. The result would be that the assessee who had already paid the tax under the Central Sales Tax Act should pay the tax under the Andhra Pradesh General Sales Tax Act, and then obtain the refund. That would entail a lot of inconvenience to the assessee, and it has no merit except that it satisfies" the letter of the law. This hardship, having evidently been realised by the department, in the case of the very assessee for the subsequent faslis, the turnover relating to the inter-State sales was exempted from the assessment under the Andhra Pradesh General Sales Tax Act.

19. After observing as above, the learned Judge said :

I think the interests of justice would be met by declaring that the tax need not be collected from the petitioner. The learned Government Pleader states that this will be duly communicated to the department.

20. However, since the main contention that the assessment was illegal was rejected, the petition was dismissed.

21. What follows from the said extracts of the judgment is that although the

learned Judge was clearly of the view that the State tax has to be collected and in a case where the goods so taxed are sold subsequently in the course of inter-State trade and commerce, the refund of the tax can be claimed, directed the Government Pleader to communicate the department that the tax need not be collected from the petitioner. It is however pertinent to note that no mandamus or direction was issued. As a matter of convenience, the direction seems to have been given to the learned Government Pleader to be communicated to the department. The assessment was upheld and the writ petition was ultimately rejected. Merely because the learned Judge gave that direction as he thought that it was in the interests of justice, it would not be correct to infer that the learned Judge held that if it is found that the goods are exigible to tax under the State law they need not be taxed if such goods are subsequently sold in the course of inter-State trade and commerce. It is true that some stray sentences appearing in the judgment do create that impression. But a closer scrutiny of the judgment would reveal that that was not the decision of the learned Judge.

22. In *A.K.D. Alaga Raja v. State of Madras* [1963] 14 S.T.C. 794 again, the Bench of the Madras High Court made the following observations :

We are not disposed to agree that the State levy of tax becomes either illegal or at least improper solely for the reason that the goods have been sold in the course of inter-State trade. The State law provides for the taxation of the commodity on the purchase and its validity is beyond question.

23. This observation puts the matter beyond controversy. It is true that the learned Judges observed that the expression used in Section 5-A(5) of the Madras General Sales Tax Act is "where a tax has been levied". And in the context of the provision they interpreted that phrase to mean "where a tax has become leviable". That observation, however, although made in reference to the language of Section 5-A(5), in reality it was intended to relate it to the other observation which the learned Judges made earlier:

The section does not appear to require that there should be a levy of tax under the Central sales tax law before the claim for refund can be accepted.

24. In other words, their Lordships meant that in order to claim refund, although the Central sales tax is leviable and has not been actually levied, the claim for refund on that account cannot be said to be bad. It can be made even prior to a tax levied by the Central sales tax law. It is true that the interpretation of particular words appearing in the section has been made and those words do not relate to the levy of tax under the Central sales tax law. But if the whole judgment is read carefully, it can leave no one in doubt that the interpretation which their Lordships have put on the words do not apply to the question which their Lordships had considered and decided as stated above. This decision also, as has already been noticed, goes counter to the submission made by the learned Advocate for the petitioner. It clearly decides that the tax has to be levied by the State Government and a refund can be claimed only in a case

where the statement under Rule 20 in regard to the inter-State transaction has been submitted within the time fixed by that rule. In that case, as no such statement was submitted, their Lordships rejected the writ petition.

25. We fail to see how these two decisions help the learned Advocate for the petitioner. If his interpretation is accepted, then not only the word "levied" will have to be understood as "leviable", but other changes consequent to that change will have to be made in the language of all these provisions. That no one is entitled to do. The language of all the provisions referred to above, in our opinion, does not admit of any doubt. Any other interpretation than the one which we have placed on those provisions would amount to flying in the face of Section 6, Section 15(b) and Rule 27-A. We do not therefore experience any difficulty in rejecting the contention.

26. It was then contended that the intention of the Parliament in bringing about the change in Section 15 of the Central Sales Tax Act was to make it clear that if the goods which are exigible to State tax are sold subsequently in the course of inter-State commerce and trade, no tax shall be levied. The argument seems to us to be devoid of any substance. Section 15(b) as it was before the Amending Act 31 of 1958 was passed, read as follows:

notwithstanding anything contained in Clause (a), no tax shall be levied in respect of the last sale or purchase inside the State if the declared goods purchased are intended for sale in the course of inter-State trade or commerce.

27. The position as it now stands in so far as Section 15(b) is concerned is practically opposite to what it was. While under the repealed Act no tax was leviable if the declared goods were intended for sale in the course of inter-State commerce and trade, the present provision makes it taxable by the State and then allows a refund, if such goods are sold in the course of inter-State trade and commerce. The difference between the two is apparent. The argument which is now advanced before us may have perhaps been possible if the old section had prevailed. In view of the fact that it was repealed and altogether a new provision has been substituted, there is little scope for an argument, the result of which would be to ignore the present law and operate upon the repealed one.

28. The statement of objects and reasons in amending Section 15 have been given as follows :

One of the conditions laid down in Section 15 is that tax on declared goods shall be levied at the stage of last sale or purchase inside the State. Certain State Governments levy tax at the first point of purchase on some of the declared goods under their respective laws, and to accommodate their views, it is proposed to leave with the States the option regarding the point of levy of tax on declared goods without in any way disturbing the scope of the present restrictions imposed by Parliament.

29. It is difficult to infer from the abovesaid statement that the previous Clause

(b) which has been replaced by the present Clause (b) remains the same. What was left undisturbed was the restrictions which were imposed by Parliament in regard to the percentage of tax beyond which the State cannot levy and the only one stage at which the State can levy the sales tax. When the change in the two provisions is distinct and clear, it will not be correct to argue that in spite of that change, the position of law remains the same, merely because something is said in the statement of objects and reasons. That does not seem to us to be the intention of the abovesaid statement.

30. We are, therefore, clearly of the view that the petitioner could not have insisted that the turnover relating to inter-State transactions in declared goods ought to be exempted from the tax itself. Those transactions are exigible to tax u/s 6. The only thing which was open to the petitioner was to pay the tax and then claim refund, if he can. The assessing authority is, therefore, in our view, right in rejecting the plea of the applicant and we do not find any reason to interfere with that order.

31. In the tax revision case, the Tribunal seems to have earlier decided in Tribunal Appeals No. 42 of 1968 etc., dated 20th March, 1969, that in respect of declared goods tax should be levied and collected only under the Central Sales Tax Act and not under the State Act. In this case, the Tribunal followed the said decision of its own and set aside the tax imposed on the relevant turnover by the assessing authority. In view of what we have held above, the order of the Tribunal in so far as it relates to the disputed turnover in that behalf is concerned, must be held as bad in law and cannot be permitted to stand. The tax even on that turnover will have to be levied and if the assessee has a right to claim refund, he may do so after he pays the tax. The Tribunal was not justified in not allowing the turnover to be taxed at all. The order of the Tribunal, therefore, is set aside to that extent.

32. For the reasons stated above, the writ petition fails and is dismissed with costs. Advocate's fee Rs. 100.

33. T.R.C. No. 16 of 1969 is allowed as stated above and with costs. Advocate's fee Rs. 100.