(1992) 01 AP CK 0025

In the Andhra Pradesh High Court

Case No : Tax Revision Case No''s. 20 and 23 of 1991

Kirlampudi Sugar Mills APPELLANT

Vs

Government of A P RESPONDENT

Date of Decision : 31-01-1992

Acts Referred:

Citation : (1992) 63 TAXMAN 484

Hon'ble Judges : V. Sivaraman Nair, J;S. Parvatha Rao, J

Bench : Division Bench

Judgement

S. Parvatha Rao, J.—These two tax revision cases are preferred by the same assessee and arise out of a common order of the Tribunal in Appeal Nos. 1526 and 1527 of 1987 dated 20-6-1990. The common questions raised for decision of this Court in these two tax revision cases are as follows:

1. Whether, on the facts and in the circumstances of the case is the Tribunal justified in holding that the freight charges incurred for and on behalf of the purchasers in the transport of rectified spirit and recovered through separate debit notes be treated as turnover liable to sales tax under the APGST Act?

2. Whether the Tribunal is justified in holding that the transport charges which are assessed as part of the sale price of rectified spirit as the sale price is split up and billed as transport and handling charges for molasses which were recovered from the purchasers separately?

3. Whether the Tribunal is correct in law in holding that this amount represents the expenditure incurred by the appellant prior to the sale but passed on to the purchaser as a separate item?

4. Whether pre-sale expenditure even if it is incurred on behalf of the purchasers and recovered from them separately forms part of the sale price?.

5. Whether the Tribunal is justified in not taking into consideration, the fact that the prices of molasses and rectified spirit sold by the petitioner are fixed by the

Government under the Molasses Control Order and that the petitioner has no right to sell at a higher price than that fixed by the Government?

6. Whether the Tribunal is justified in not taking into consideration the fact that the customers of the petitioner need not pay higher price for the rectified spirit than that fixed by the Government and the fact that they reimbursed the transport and handling charges shows that it was the expenditure of the customers which was incurred by the petitioner on their behalf and was recovered from the customers by way of separate debit notes and as such cannot form part of the sale price?

The assessee is running a distillery and manufactures alcohol from out of molasses allotted to it under the Molasses Control Order, 1961. During the relevant assessment years, i.e., 1981-82 and 1982-83, the assessee claimed that the turnovers of Rs. 14,89,346.75 and Rs. 1,06,477.38, respectively, related to transport charges incurred in respect of the rectified spirit sold by it and that the said expenditure was incurred at the request of the customers and was independent of the sale contracts for the rectified spirit and that, therefore, it should not be included in the taxable turnover in the hands of the assessee and as such disputed its inclusion in the taxable turnover for the said assessment years.

2. The Tribunal held as follows:

On verification of the records by us, it is seen that the assessing authority himself has stated that the head of account is ''molasses transport and handling charges'' and not transport charges of rectified spirit to the customers. We have verified all the vouchers and the ledger and it is clear that the said head of account is what is collected from the customers as the transport charges incurred for molasses and hand-ling charges and not what is paid for transporting the rectified spirit. Inspite of our questioning to show us any account or voucher indicating that any lorry hire was incurred by the appellant for transport of rectified spirit, they could not produce a single voucher or show any accounts to prove it. On the other hand, the appellant who was present and was assisting his counsel, categorically stated that the tankers are brought by the purchasers and the hire charges are paid by the purchasers. He only said that loading is done by workers and that is the handling charges and according to him four labourers could fill up an 8,000 litre tanker in a day. As we verified the accounts, we find that the molasses transport and handling charges which are separately debited to the customers is roughly 21/2 times the cost of the rectified spirit sold to them. On verification of the accounts and the documents produced before us, we are satisfied that the charges which are assessed as part of sale price of rectified spirit are nothing but the sale price which is split up and Billed as molasses transport and handling charges and recovered from the purchasers. Thus it is an expenditure incurred by the appellant prior to sale but passed on to the purchaser as a separate item. As both the amounts, i.e., the invoice amount as well as the amount debited as M.T. charges and handling charges are really part and parcel of the sale price itself and not any transport charges for transporting rectified spirit from the factory of the appellant to the customers, the assessing authority was right in holding that it is a part of sale price and, therefore, taxable as sales turnover. The appellant further pleaded that at least the handling charges which are only post sale expenditure ought to have been deducted. We find that actually the filling is done by mechanical process and only the regular workers operate the said pump and there are no other handling charges involved in loading the goods into the lorry of the purchaser, and that loading is done by the employees and not by any independent worker employed therefore, and there is no account maintained for any such handling charges. As rule 6(g) requires that there must be proof of service rendered in connection with the packing of goods and they should be specified and charged by the dealer separately, then alone the exemption is to be granted. As there is no packing involved herein and it is only loading a tanker and, therefore, it cannot fall under rule 6(g). Even otherwise no such charges for services rendered are billed separately and on the other hand they are clubbed with molasses transport charges which are nothing but part and parcel of the sale price, and therefore even on that footing, he will not be entitled to any exemption under rule 6(g). Therefore, it is clear that the appellant is not entitled to exclusion of the said turnover either as transport charges or as charges for services rendered in connection with the packing of goods under rule 6(g) of APGST Act. Therefore, the plea of the appellant in regard to this item in both the cases is rejected as devoid of merit.

3. We find that the findings and the reasoning of the Tribunal cannot be faulted. On the facts, the Tribunal gave a categorical finding that the freight charges allegedly incurred by the assessee for and on behalf of the purchasers for the transport of rectified spirit were shown in the books of the assessee as incurred for molasses transport and handling charges and collected as such from the customers. The counsel for the assessee does not dispute the said finding of the Tribunal and in fact cannot assail the said finding before us as it is a finding of fact. He advances a specious argument that as the customers themselves agreed to pay the molasses transport and handling charges incurred by the assessee for transporting molasses from out of which the rectified spirit sold to them was produced, the said charges cannot be treated as sale price of the rectified spirit purchased by the customers and, therefore, cannot be included in the taxable turnover of the assessee. He also ventures to advance the argument that the molasses was transported at the instance of the customers. This is an argument of despair and no factual basis, whatsoever, is made out. The counsel for the assessee has not been able to produce before us any provision of law under which molasses can be allotted to the purchasers of rectified spirit for the purpose of having it converted as rectified spirit by the distilleries. It is not disputed that molasses is a controlled commodity and that its issue by the Molasses Controller is governed by the Molasses Control Order. It is not his case that molasses was purchased by the customers of the assessee and that what

was charged by the assessee was only for conversion of molasses into alcohol. Admittedly, what was sold by the assessee was rectified spirit manufactured by the assessee. It is obvious that the assessee had devised this method of collecting additional amounts for the rectified spirit sold by it describing the said collections as ''molasses transport and handling charges'' without there being any factual basis for the said collection. The assessee himself admits in the revision petitions filed that rectified spirit is a controlled commodity and its price is determined by the Government and that the assessee cannot charge anything more than the statutory rate, but contends on that premise that what was charged as ''molasses transport and handling charges'' and willingly paid by the customers to the assessee cannot form part of the turnover. Whether the assessee could have collected the additional amounts under the law or not and whether, if any such collections are made, he would be liable for any penal action, is not the question before us. The fact that the said amounts were collected from the customers at the time of sale of the rectified spirit to them is not in dispute. That is enough to attract the said collections into the net of ''turnover'' as defined in section 2 (s) of the Andhra Pradesh General Sales-tax Act, 1957 because those amounts fall under "any other sum charged by the dealer, whatever be the description, name or object thereof." We, therefore, do not find that the Tribunal decided any question of law erroneously or failed to decide any question of law arising on the facts of the case. The tax revision cases are dismissed.