
(1962) 03 AP CK 0014

In the Andhra Pradesh High Court

Case No : Tax Revision Cases No. 34 of 1961

Kotak and Company

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 12-03-1962

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 2, 6

Citation : (1962) 13 STC 709

Hon'ble Judges : Venkatesam, J; Satyanarayana Raju, J

Bench : Division Bench

Advocate : C. Kondaiah and T. Venkatappa, for the Appellant; D.V. Sastry, for The Third Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Venkatesam, J.—This tax revision case is preferred against the order of the Sales Tax Appellate Tribunal, Andhra Pradesh, in Tribunal Appeal No. 392 of 1960 on its file.

2. The facts necessary for an appreciation of the contentions of the petitioner are briefly these. The assessee M/s. Kotak & Co., at Adoni, are dealers in cotton. For the assessment year 1958-59, the petitioner was assessed to sales tax by the assessing authority (Commercial Tax Officer, Kurnool) on a turnover of Rs. 8,50,053-74 nP. and the said order having been confirmed by the Deputy Commissioner, Anantapur, the matter was carried in appeal to the Sales Tax Appellate Tribunal, Hyderabad, which confirmed the orders of the departmental authorities. Against that decision the above revision was preferred.

3. A number of contentions appear to have been raised before the Tribunal. But the learned counsel for the petitioner, Sri C. Kondaiah, made only two submissions, viz., (1) that the Tribunal ought to have allowed by way of deduction Rs. 1,10,443-57 nP. from the taxable turnover in respect of the sales of cotton seeds made by the assessee locally, and (2) that the Tribunal erred in

treating Rs. 2,06,397-31 nP., as re-sales and not granting the exemption thereon.

4. The first contention will now be considered. Section 5 of the Andhra Pradesh General Sales Tax Act (hereinafter referred to as "the Act"), which is the charging section, lays down that:

5. (1) Every dealer (other than a casual trader and an agent of a non-resident dealer) whose total turnover for a year is not less than Rs. 10,000 and every casual trader or agent of a non-resident dealer, whatever be his turnover for the year, shall pay a tax for each year, at the rate of two naye paise on every rupee of his turnover :

(2) ...

(3) Notwithstanding anything contained in Sub-section (1), the tax under this Act shall be levied-

(a) in the case of the goods mentioned in the Second Schedule, at the rates and only at the point of the sale specified as applicable thereto effected in the State by the dealer selling them, on his turnover of sales in each year relating to such goods irrespective of the quantum of turnover ;

(b) in the case of the goods mentioned in the Third Schedule, at the rates and only at the point of the purchase specified as applicable thereto, effected in the State by the dealer purchasing them, on his turnover of purchase in each year relating to such goods irrespective of the quantum of turnover.

(4) For the purpose of this section and the other provisions of this Act, the turnover on which a dealer shall be liable to pay tax, shall be determined after making such deductions from his total turnover, and in such manner as may be prescribed.

(5) The taxes under this section shall be assessed, levied and collected in such manner, as may be prescribed :

Provided that-

(i) in respect of the same transaction, the buyer or the seller, but not both, as determined by such, rules as may be prescribed, shall be taxed;

(ii) where a dealer has been taxed in respect of the purchase of any goods, in accordance with the rules referred to in Clause (1) of this proviso, he shall not be taxed again in respect of any sale of such goods effected by him.

5. Schedule II to the Act enumerates the goods in respect of which a single point sales tax only is leviable u/s 5(3)(a), and item 23 therein is to the effect that cotton seeds are liable to levy at the point of first sale in the State at the rate of 2 naye Paise in the rupee.

6. Section 6 of the Act, dealing with the tax in respect of declared goods, lays down that,

Notwithstanding anything contained in Section 5, 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 Fourth Schedule, 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.

7. This section is obviously the charging section in respect of declared goods. Section 2(c) of the Central Sales Tax Act defines "declared goods " to mean goods declared u/s 14 to be of special importance in inter-State trade or commerce. Section 14 of the Central Sales Tax Act enumerates certain goods to be of special importance in inter-State trade or commerce, and item (ii) therein is :-

(ii) cotton, that is to say, all kinds of cotton (indigenous or imported) in its unmanufactured state, whether ginned or unginned, baled, pressed or otherwise, but not including cotton waste;

8. Schedule IV to the Act enumerates the declared goods in respect of which a single point tax only is leviable u/s 6 of the Act, and item 5 of the Schedule provides that cotton, that is to say all kinds of cotton (indigenous or imported) in its unmanufactured state, whether ginned or unginned, baled, pressed or otherwise, but not including cotton waste, the point of levy when purchased by a spinning mill in the State is at the point of purchase by the spinning mill and in all other cases at the point of purchase by the last dealer who buys it in the State, and that the rate of tax is 2 naye Paise in the rupee.

9. In the instant case, the assessee contends that as the purchaser of cotton, the tax was already levied on him under item 5 of Schedule IV to the Act, and that as seller of cotton seeds, tax was again levied on him on their sale, that cotton seeds form part of cotton (called kapas), and that it is a case of double taxation, which ought not to be allowed. He, therefore, contends that a deduction ought to have been allowed in respect of the turnover relating to the sale of cotton seeds. In other words, by taxing him both on purchase of cotton and sale of cotton seeds, he was taxed twice, which is not permissible in law.

10. A similar question was considered by a Bench of this Court in Pithapuram Taluk Tobacco, Cigars and Soda Merchants" Union v. The State of Andhra Pradesh [1958] 9 S.T.C. 723 where the question for consideration was whether an assessee who was taxed on the purchase of country tobacco could also be taxed on the sale of cigars, cheroots, beedies, snuff, etc., which are only raw tobacco in a different form, and involved no manufacturing process, and whether it amounted to a second tax on country tobacco itself. There, the contention was raised that cigars, cheroots, etc., which are prepared from country tobacco and sold at less than 2 annas each, involved no manufacturing process, and must be considered to be a tax on the country tobacco itself, that cigars and cheroots are prepared by merely sprinkling the tobacco with water, removing the stems, cutting the leaves into convenient strips and twisting the longer leaves round the

shorter pieces which are used as stuffing material, that except the raw tobacco leaf no other commodity is used, and that the conversion of a tobacco leaf into a cigar is not a work of art and involves no particular skill or craftsmanship, and that consequently to tax the cigars at the purchase point after taxing the raw tobacco at the sale point amounted to double taxation. That contention was rejected on the ground that the country tobacco, viz., the leaf, did not remain in the same form, but it changed its character as raw leaf to that of a finished consumable article like the cigars, or cheroots, and that it is not the leaf that is consumed as cigar or cheroot, and that some manufacturing process was involved in the production of those articles, and that the contention of double taxation had no foundation.

11. Applying the principle laid down therein, what do we find in the instant case ? Kapas or cotton in its unmanufactured state, no doubt, contains the cotton seed. But it is only by a manufacturing process that the cotton and the seed are separated, and it is not correct to say that the seed so separated is cotton itself, or part of the cotton. They are two distinct goods, though before the manufacturing process the seed might have been a part of the cotton itself. That does not warrant the contention that no manufacturing process was at all required for extracting the cotton seed from the cotton, or that the seed so extracted is not different from cotton itself. Clause (ii) of proviso to Section 5(5) of the Act lays down that, where a dealer has been taxed in respect of the purchase of any goods, in accordance with the rules referred to in Clause (1) of that proviso, he shall not be taxed again in respect of any sale of such goods effected by him. So, what is forbidden is, where a tax has been paid on the goods by the dealer as a purchaser, he shall not be taxed again in respect of any sale of such goods. It is, no doubt, true that the dealer as purchaser of cotton pays the tax on cotton at the purchase point under Schedule IV, item 5. But the goods taxed on the sale point is cotton seed under item 23 of Schedule II. As observed in the above case :

The policy of taxation is more appropriately the province of the statesmen and of the legislature rather than of the lawyer or the courts. It is a public policy dependent not only upon the necessities of administration but also implementation of the scheme to serve the public needs.

12. If in the exercise of the general policy of taxation the Legislature describes cotton and cotton seeds as two different commodities or goods for the purpose of the Sales Tax Act; it is not open to canvass the reasonableness or the justification of such a classification, relying upon the hardship that would result therefrom. We have stated above our reasons for holding that cotton seeds cannot be said to be the same goods as cotton. In that view, we are of the opinion that there is no force in this contention that there was double taxation. The deduction claimed under this head, therefore, fails.

13. Amplifying the second contention of the petitioner it is said that they sold the cotton of the value of Rs. 2,06,397-31 nP. to Messrs Bharat Vijay Mills, Adoni,

who were registered dealers under the Act and who exported the same goods figuring as consignor and consignee, and that they are sales within the State and not governed by the Central Sales Tax Act. The facts as appear from the record are that the Bharat Vijay Mills Limited, no doubt registered themselves under the Act, but they did not function at Adoni at all. It also appears that the manager of the assessee-firm acted as the agent of those mills. The applications for the issue of registration certificate in favour of Bharat Vijay Mills were signed only by one Vaidyanath, the manager of the assessce-firm, which is a very extraordinary circumstance. The contracts between the assessee and the Bharat Vijay Mills disclose that the weight of cotton was to be determined on actual weighment at the mills in Bombay State, and that the payment was to be made against such weighment, testing etc. The final invoices were to be prepared by the buyers at the head office at Bombay. If really the purchases made by the mills from the assessee were genuine transactions, within the State, there was no need for the cotton so purchased to be re-weighed at the mills in Bombay when payment was to be made.

14. On these facts and circumstances, the Tribunal came to the conclusion that this turnover did not represent sales within the State so as to make the Bharat Vijay Mills, the last buyer in the State, but not the assessee. On behalf of the petitioner, reliance was placed on the recitals in some of the contracts that the passing and weighment was at Adoni, and that the delivery was also at Adoni. On the strength of this circumstance, we are not prepared to brush aside the other facts and hold that the goods were sold to the mills at Adoni. The Tribunal is the final fact finding authority, and we do not find that the conclusion of the Tribunal is, in any way, affected by an error of law warranting our interference. This contention of the petitioner is equally unsustainable. No other point has been argued before us.

15. The petition, therefore, fails and is dismissed with costs. Advocate's fee Rs. 100.