
(1984) 07 AP CK 0021

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 76 of 1982

Kuldeep Wines

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 16-07-1984

Acts Referred:

Citation : (1988) 68 STC 198

Hon'ble Judges : Y.V. Anjaneyulu, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : S. Dasaratharama Reddi and K. Raji Reddy, for the Appellant;
Government Pleader for Commercial Taxes Department, for the Respondent

Judgement

Y.V. Anjaneyulu, J.—This tax revision case is filed against the order of the Sales Tax Appellate Tribunal dated October 30, 1981, affirming the assessment made by the Commercial Tax Officer rejecting the assessee's claim that excise duty of Rs. 32,895 did not constitute part of the sale price and is therefore not includible in the turnover. The Tribunal also affirmed the estimate of gross profit at 35 per cent on the excise duty and the inclusion of the same in the turnover assessed finally. A few facts may be stated to appreciate the matter in dispute. The assessee is a dealer in liquors. The assessee imported liquor from Bangalore. It was purchased from Khoday Brewing and Distilling Industries, Bangalore, under a bill issued on 24th February, 1977. The value of the liquor purchased was Rs. 22,880. The assessee sold the same for Rs. 25,000 to Chaman Wines, Hyderabad, under a bill issued on 2nd March, 1977. For the purpose of securing the release of the liquor from the bonded warehouse, the assessee was required to pay excise duty of Rs. 32,895. The assessee claimed that the above excise duty was paid by Chaman Wines to secure the release of the liquor from the warehouse. It is claimed that the assessee imported the above liquor on behalf of Chaman Wines and consequently he instructed the Chaman Wines to arrange for the payment of the excise duty. It appears, Chaman Wines issued a cheque in favour of the assessee for the sum of Rs. 32,895 which cheque was encashed by

the assessee and the same was remitted into the State Bank of Hyderabad under challan No. 026265 dated 20th January, 1977. It is not in dispute that the challan supported the payment of the excise duty by the assessee alone. The challan does not evidence the fact that the payment of the excise duty was in the name of Chaman Wines. After the payment of the excise duty as above, it appears, the release of the liquor was secured from the warehouse and the same was sold to Chaman Wines for the sum of Rs. 25,000. It is admitted that the sum of Rs. 25,000, being the first sale of liquor, was duty admitted by the assessee as part of its turnover for purposes of assessment. Before the Commercial Tax Officer the assessee took the plea that the excise duty of Rs. 32,895 paid could not be considered to be part of the sale price inasmuch as it was paid directly by Chaman Wines. The assessee's case was that the sum in question did not come into its coffers and was not part of its circulating capital. The assessee relied on the judgment of the Supreme Court in *McDowell & Company Ltd. v. Commercial Tax Officer* [1977] 39 STC 151.

2. The Commercial Tax Officer rejected the assessee's plea that the excise duty paid did not form part of the assessee's turnover. The Commercial Tax Officer held that, on the admitted facts, there was no evidence to show that the assessee imported the liquor on behalf of Chaman Wines or that the excise duty was paid directly by Chaman Wines in its own name without the assessee having to do anything with the payment. The facts, that Chaman Wines issued a cheque in favour of the assessee, that the assessee encashed the cheque and realised the cash and that the amount was remitted by the assessee into the State Bank of Hyderabad in its own name and obtained the challan in support of the payment to secure the release of the liquor were, according to the Commercial Tax Officer, indicative of the real effect of the transaction. On the above facts, the Commercial Tax Officer came to the conclusion that the excise duty was paid by the assessee and that there was failure to include the same in the sale-bill issued to Chaman Wines which was clearly a device adopted by the assessee for the purpose of avoiding payment of sales tax. The Commercial Tax Officer also held that the purchase value of the liquor together with excise duty paid (Rs. 22,880 + Rs. 32,895) aggregated to Rs. 55,775. He estimated gross profit on the above purchase price at 35 per cent which worked out to Rs. 19,520 and arrived at a sum of Rs. 75,295. The Commercial Tax Officer held that the assessee was liable to pay sales tax at 25 1/4 per cent on the abovementioned turnover of Rs. 75,295 and accordingly demanded payment of the same.

3. The assessee appealed to the Assistant Commissioner (Appeals) who affirmed the order of the Commercial Tax Officer. On second appeal, the Sales Tax Appellate Tribunal also upheld the assessment. The Tribunal observed that the decision of this Court in *M. J. Gopal, Nellore v. State of Andhra Pradesh* in T.R.C. Nos. 69 and 70 of 1976 squarely applied to the facts of the assessee's case and the Commercial Tax Officer was justified in making the above assessment. The Tribunal also held that the facts of *McDowell and Company Ltd. Vs. Commercial Tax Officer VII Circle, Hyderabad*, were different and that the decision of the

Supreme Court is not applicable. It is against this decision of the Tribunal that the assessee came in revision to this Court.

4. We consider that on the undisputed facts there can be no escape from the conclusion that the excise duty of Rs. 32,895 paid formed part of the assessee's turnover. In the first place there was no evidence that the liquor was imported from Bangalore on behalf of Chaman Wines. The payment of excise duty was on 20th January, 1977 which was long before the liquor was released from the warehouse. The liquor was purchased under a bill issued on 24th February, 1977 from Khoday Brewing and Distilling Industries, Bangalore. The claim was that Chaman Wines issued the cheque for the sum of Rs. 32,895 in the name of the assessee and that the assessee encashed the cheque. It is further in evidence that the excise duty of Rs. 32,895 was paid into the State Bank of Hyderabad under a challan in the assessee's own name. On these facts it is not possible to accept the assessee's submission that the payment of excise duty was by Chaman Wines directly and the assessee had nothing to do with the same. Obviously that happened was that the assessee did not possess necessary money for the payment of excise duty and secured an advance from Chaman Wines to enable the payment being made in the assessee's own name. The real effect of the transaction is that the assessee secured an advance of Rs. 32,895 from Chaman Wines which was adjustable when the sale-bill was issued. While issuing the sale-bill on 2nd March, 1977, the assessee quantified the value of the liquor sold at only Rs. 25,000 ignoring the sum of Rs. 32,895 which formed part of the purchase price and omitted to give credit for the advance obtained from Chaman Wines earlier. In our opinion, this is a clear device followed by the assessee to avoid the payment of sales tax on the excise duty which formed part of the turnover. We are unable to appreciate the contention of Sri Ashok, learned counsel for the assessee, that the sum of Rs. 32,895 never reached the assessee's till nor did it form part of its circulating capital. It was not denied that the cheque was issued in the name of the assessee and that cheque was encashed by the assessee and the amount was paid into the State Bank of Hyderabad under a challan in the assessee's name. The assessee is maintaining books of account. It is inconceivable that the cheque issued in the name of the assessee could have been cashed without passing through the transactions in the books of account. If the cheque issued is a crossed or account-payee cheque, it must necessarily have gone through the assessee's bank account. If, however, the assessee obtained a self cheque to suit his convenience and encashed the cheque across the bank counter, the transaction should still have been passed through the accounts maintained by the assessee. If the assessee did not record these transactions in the books of account, the only conclusion is that the assessee is not maintaining its accounts properly and the accounts are incomplete. It is not open to the assessee to omit the recording the transactions in its books and claim that the amount did not reach it and did not, therefore, form part of its circulating capital. We must reject this plea as totally unsustainable.

5. The decision of the Supreme Court in McDowell's case [1977] 39 STC 151 has clearly no application in the present case. The facts of that case were quite different. Attention may be invited to the following observations at page 154 of the report :

"The modus operandi of the appellant is that it makes a bill for the value of the liquor required by an intending purchaser, who thereafter pays the requisite countervailing duty in his own name and the Excise Officer in-charge of the bonded warehouse grants him a pass entitling him to remove the liquor from the warehouse. According to the appellant, it gets only the price of the liquor from its buyers."

Attention may also be invited to the following observations at page 160 of the report :

"In the instant cases, the excise and countervailing duties did not go into the common tills of the appellants and did not become a part of their circulating capital. We are, therefore, of the view that the sales tax authorities were not competent to include in the turnovers of the appellants the excise duty and the countervailing duty which was not charged by them but was charged by and paid directly to the excise authorities by the buyers of the liquors as stated above."

The facts in the assessee's case are totally distinguishable. The sum of Rs. 32,895, on the undisputed facts stated above, reached the assessee's till and became part of its circulating capital. The principle in McDowell and Company Ltd. Vs. Commercial Tax Officer VII Circle, Hyderabad, is clearly inapplicable in the assessee's case. In our opinion, the Commercial Tax Officer was competent to include the excise duty of Rs. 32,895 as forming part of the turnover and subjecting the same to tax.

6. Learned counsel for the assessee also contended that in any event there is no justification for the estimate of gross profit at 35 per cent on the total purchase value of Rs. 55,775 (including the excise duty). It is stated that the liquor was sold only for Rs. 25,000 which sum was included in the turnover declared by the assessee. It is not in evidence that the assessee realised any sum over and above the two sums of Rs. 25,000 and Rs. 32,895 referred to above. It is urged that the Commercial Tax Officer was in error in observing that the assessee underbilled. We are inclined to accept this contention. The turnover for purposes of assessment will consist of the sum of Rs. 25,000 and the excise duty of Rs. 32,895 paid. There is no material to indicate that the assessee charged any profit in respect of the excise duty. In our opinion, the Commercial Tax Officer could subject the tax only to the sum of Rs. 57,895 representing the sum total of Rs. 25,000 for which the liquor was sold and Rs. 32,895 which was the excise duty paid. We accordingly direct that the assessment be restricted to the turnover of Rs. 57,895 against Rs. 75,295.

7. In the result, the tax revision case is partly allowed. The parties shall bear their own costs. Advocate's fee Rs. 250.

8. Petition partly allowed.