

(2004) 08 AP CK 0036

In the Andhra Pradesh High Court

Case No : Special Appeal No's. 34 and 35 of 1994 and T.R.C. No's. 36, 37, 38, 39, 40 and 41 of 1994

Kumar Spirits Pvt. Ltd.

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 16-08-2004

Acts Referred:

Andhra Pradesh General Sales Tax Rules, 1957 — Rule 6(1)

Citation : (2006) 146 STC 581

Hon'ble Judges : S. Ananda Reddy, J; Bilal Nazki, J

Bench : Division Bench

Advocate : M.V.K. Murthy, for the Appellant; Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

S. Ananda Reddy, J.—These special appeals are directed against the revision orders passed by the Commissioner of Commercial Taxes for the assessment years 1989-90 and 1990-91 under which the revision orders passed by the Deputy Commissioner of Commercial Taxes were revised so as to include in the taxable turnover the value representing the credit notes issued by the manufacturers to the distributors. Similarly, the tax revision cases are at the instance of the dealers aggrieved by the common order passed by the Sales Tax Appellate Tribunal (hereafter referred to as "the Tribunal"), Hyderabad, whereunder the Tribunal negated the claim of the dealers to exclude the value representing the credit notes issued by the manufacturers to the dealer/distributors. As a common issue is involved in both the appeals and the tax revision cases, for the sake of convenience, they are being disposed of by this common order.

2. All the dealers, who are the appellants and petitioners in the special appeals and the tax revision cases, were carrying on the business in liquor as distributors of the brands manufactured by M/s. Shaw Wallace & Company Limited and M/s.

Vinadale Distilleries (P) Limited, Hyderabad. For the relevant assessment years in question, sales tax was leviable on the first and last sale on the total sales effected. At the same time, as per the proviso to the Sixth Schedule, the intermediate dealers are taxable on the differential turnover, i.e., the intermediate dealers are entitled for exclusion of the turnover, which has already suffered tax. All the petitioners are intermediate traders, who are liable to tax only on the differential turnover, i.e., after excluding the turnover, which has already suffered tax. It is the case of all the dealers that they used to purchase various brands of liquor from the above referred two manufacturers who are the first sellers and who are liable to be taxed on the total turnover insofar as their sales are concerned. After the sales that were effected by the dealers in question, they have declared the differential turnover, i.e., the difference between their purchase price and sale price, the said differential turnover was subjected to tax by the assessing officer. But, however, it came to light that all the dealers have received periodical credit notes representing the discount, i.e., annual discounts and quarterly discounts from the manufacturers. But they were not accounted in the assessments though they were entered in the books of accounts. These facts came to light subsequently when the task force of the department verified the books of accounts of the above referred two manufacturers. Therefore, the Deputy Commissioner of Commercial Taxes having jurisdiction initiated revisional proceedings and revised the assessment orders so as to bring to the taxable turnover the amounts representing the credit notes. As certain amounts were excluded while revising the assessment by the Deputy Commissioner, the Commissioner of Commercial Taxes further revised the assessment orders of the Deputy Commissioner so as to include the amounts representing the credit notes, against which the special appeals are filed by the dealer. Insofar as the dealers aggrieved against the revised orders of the Deputy Commissioner, they preferred appeals to the Sales Tax Appellate Tribunal. The Appellate Tribunal since upheld the orders of the revised assessments, the said orders are assailed in the tax revision cases.

3. The common issue involved in both the appeals and the tax revision cases is as to the treatment to be given to the amounts representing the credit notes. Though the assessing officer accepted the claim of the dealers that the amount representing the credit notes is not liable to tax, but the said contention was not accepted while revising the assessments both by the Deputy Commissioner as well as the Commissioner on the premise that to the extent of the credit notes, the purchase price of the dealers was reduced, thereby the differential turnover of the dealers increased to that extent. Therefore, the said amount representing the credit notes should be included in the differential turnover for the purpose of levying tax on the dealers.

4. At the time of hearing, the learned Counsel for the dealers contended that the first seller has collected tax on the total turnover representing the sale bills from the respective dealers and the first seller-manufacturers claim reduction/rebate in their turnover representing the credit notes and obtained refund of the tax

from the department, therefore, the said amount representing the credit notes should not be treated as a taxable turnover in the hands of the dealers, who are the subsequent sellers. If the said amount representing the credit notes is treated as part of the turnover and tax is levied, it amounts to double taxation. Therefore, the authorities are not justified in treating the amount representing the credit notes as part of the taxable turnover of the dealers. The learned Counsel also referred to rule 6(1)(a) of the Andhra Pradesh General Sales Tax Rules, 1957 and contended that the tax is leviable only on the net turnover of the dealer after allowing all the discounts, etc. The learned Counsel also referred to proviso to Sixth Schedule, which was applicable for the relevant assessment years in question, as per which insofar as the dealers apart from the first and the last seller, the intermediate sellers are liable to tax only on the differential turnover after excluding the turnover, which has already suffered tax. Therefore, according to the learned Counsel, if the claim of the dealers is considered in the light of the above provisions, as the tax was collected on the entire sale price charged by the above referred two manufacturers, the said turnover, in entirety, has to be allowed for exclusion so as to arrive at the taxable turnover in the hands of , the dealers in question. As the dealers in question have already paid the sales tax on the purchases, the discount by way of credit notes, if treated as part of the taxable turnover, the same would amount to double taxation as that part of the turnover has already suffered tax when the manufacturers have collected sales tax on the entire sale bills to the dealers in question. Therefore, on any account, the value representing the credit notes should not be treated as part of the taxable turnover in the hands of the dealers in question.

5. This contention of the dealers is opposed by the learned Special Government Pleader for Commercial Taxes. According to the learned Counsel, the sale invoices show the price of each item that was sold. The said sale invoice contains a note that the value mentioned in the invoice is inclusive of sales tax, surcharge, etc. Therefore, it is clear that sales tax, surcharge or any other taxes were not separately collected by the sellers to the dealers. Out of the sale price, a part of the value was returned to the dealers under the credit notes. When the manufacturer returned a part of the sale consideration under the credit notes, the said returned amount under the credit notes includes a part of the tax that was already collected to, as the alleged tax collected was inseparable part of the sale consideration. Therefore, it is not open to the dealers to contend that what was returned is only the sale value of the goods excluding the tax that was collected by their seller. The learned Counsel also contended that a categorical finding was recorded by the Tribunal that no evidence was adduced showing that the turnover representing the credit notes was also declared by the manufacturer as part of their taxable turnover and accordingly paid the tax. In the absence of any such evidence, it is not open to the dealer to contend that a portion of the turnover representing the credit notes had already suffered tax. When the dealers had received a part of the amount paid under the sale invoices, the same has to be reduced in order to arrive the purchase turnover of all the dealers.

Instead of reducing the value of the credit notes from out of their purchases, they have declared the original purchase turnover for arriving at the differential taxable turnover and thus reduced the taxable turnover to the extent of the value representing the credit notes. Therefore, the Deputy Commissioner as well as the Commissioner have rightly revised the assessments so as to include the value of the credit notes in the taxable turnover. According to the learned Counsel, the Tribunal has rightly considered this issue and upheld the revised assessment of the Deputy Commissioner. Therefore, there is no case warranting interference.

6. From the above, the issue to be examined is whether the value of the credit notes goes to reduce the purchase turnover of the dealers or not ?

7. At the time of hearing, the learned Counsel for the dealers filed certain sales invoices in order to show that the sale price by the manufacturers to the dealers in question includes sales tax, surcharge, etc. There is a declaration contained in the invoice which shows that the sale price includes sales tax and other taxes. But such taxes were not separately shown. The material papers filed also contain copies of the credit notes. The description in the credit notes shows that the amount specified in the credit notes was credited to the account of the dealer towards annual rebate given on the sales. Similarly, as found by the Tribunal, there are other credit notes representing even the quarterly rebates. In fact, the learned Counsel also filed at page No. 12 of the material papers, a sale invoice where the rebate as well as the discount are specifically provided in the sale invoice itself. A perusal of the said sale invoice shows that the price includes sales tax, surcharge, etc., and out of the total sale price, a part of the sale price was reduced towards rebate and a part of the sale price was reduced as discount and thereafter the net amount payable by the purchaser to the manufacturer is specified in the same bill. If such discount or rebate was reduced from out of the total sale price which is inclusive of the taxes as specified in the note of the invoice, the reduction proportionately represents the taxes that were already included. Therefore, the contention of the learned Counsel for the dealers that the entire sale price suffered tax when sales tax was collected by the manufacturers while effecting first sale to the A dealers is incorrect. Similarly, the value representing the credit notes also goes to reduce the sale price of the manufacturer or the purchase price of the dealers, as a portion of the sale price was credited to the account of the dealer under the guise of credit notes. Even in such cases also the net effect is, the purchase price to the dealer is reduced to the extent of the credit given to the dealers, to the extent of the value representing the credit notes. Therefore, while arriving at the differential taxable turnover, the value of the credit notes has to be taken into account either by way of addition to the differential taxable turnover or by way of reduction of the purchase turnover of the dealer.

8. A perusal of the record shows that the dealers did not account these amounts representing credit notes before the assessing officer, though these amounts

were credited in their books of accounts. The material on record also clearly discloses that the entries made in the ledgers of the dealers clearly show that various amounts representing the credit notes received are accounted by the dealers. But their claim before the revising authority or before the Tribunal was that the manufacturers, who are the first sellers, did not claim any exemption on any such turnover during the relevant assessment years. Therefore, the said turnover had already suffered tax in the hands of the first seller, and therefore, the said turnover is not includable in the differential taxable turnover of the dealers. If it is included in the differential taxable turnover, the same would amount to double taxation of the same turnover, both in the hands of the first seller, i.e., manufacturer as well as the second sellers, i.e., the dealers in question. But the Tribunal on verification of the records, recorded a categorical finding that no material is produced by the dealers to show that such discounts were assessed to tax in the hands of the sellers. Further, contrary to the stand that was taken before the Tribunal, the learned Counsel for the dealers contended that the manufacturers claimed exemption and obtained refund of the tax, which was collected from the dealers in question, therefore, the dealers are not liable to be taxed again. This contention is also devoid of any merit. If the first seller did not declare the turnover representing the credit notes, which was given credit to the dealers in question as against their purchase turnover, the question of collecting tax on such turnover would not arise as no separate tax was collected. The prices of all the items as disclosed in the sale invoices are inclusive of taxes. When a part of the said sale price is reduced after rebate or discount, the said reduction would have the effect of proportionately reducing the tax also. Therefore, there is no merit in the contention of the dealers that the portion of the turnover representing the credit notes has already suffered tax or dealers have already paid the tax on that.

9. In view of the above discussion, the contentions that are advanced on behalf of the dealers are clearly devoid of merit and the authorities below have rightly included the value of the credit notes while arriving at the differential taxable turnover of the dealers.

10. Under the above circumstances, the special appeals as well as the tax revision cases are devoid of merit and accordingly dismissed. No costs.