
(2001) 09 AP CK 0097

In the Andhra Pradesh High Court

Case No : T.R.C. No. 67 and 72 of 1994

Mithra Oxygen Company Pvt. Ltd.

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 24-09-2001

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 21

Citation : (2001) 09 AP CK 0097

Hon'ble Judges : S.R. Nayak, J;S. Ananda Reddy, J

Bench : Division Bench

Advocate : S. Dwaraknath Reddy, for the Appellant; Spl. Govt. Pleader for Taxes, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, J.—These two Tax Revision Cases are directed against the common order of the Sales Tax Appellate Tribunal dated 25.3.1994 in T.A. Nos.287 and 288 of 1990.

2. The petitioner-dealer is engaged in the business of manufacturing and supplying of Industrial Oxygen Gas at Vijayawada, and it is a registered dealer under the APGST Act. For the assessment year 1986-87 and 1987-88 the Commercial Tax Officer completed assessment of the petitioner by his orders dated 15.11.1988 and 21.11.1988 levying tax on the turnover including a sum of Rs. 6,87,021 and Rs.10,13,687 for the said two assessment years realized by way of debit notes for to and fro transport loading and unloading charges. The Appellate Deputy Commissioner by a common order dated 6.1.1990 for both the assessment years allowed the appeal in part giving relief on 50% of the disputed amounts, relating to return of cylinders to the petitioner's premises from the places of the customers and charges incurred for unloading and cleaning the empty cylinders. However, the Appellate Deputy Commissioner dismissed the appeal in respect of the remaining 50% of the disputed amount as relating to freight charges for transporting the gas cylinders to the places of customers from

petitioner's factory.

3. The petitioner aggrieved by that part of the order of the Special Appellate Deputy Commissioner which went against it, preferred appeals to the Sales Tax Appellate in T.A. Nos. 287 and 288 of 1990 contending inter alia that the freight charges were incurred by the petitioner under separate agreement with the customers and delivery was complete at the factory of the petitioner itself and therefore, it is not under FOR destination contract. The Tribunal dismissed the appeals filed by the petitioner on the ground that though the petitioner-dealer specifically pleaded that there are separate independent agreements entered into by it with the customers relating to freight charges, no evidence was placed before it or the authorities below in support of that plea.

4. Sri S. Dwarakanath, learned counsel for the petitioner would contend that there is a total non application of mind on the part by the Tribunal to the relevant materials viz., invoices and copies of Debit notes placed in the case. He would maintain that these relevant documents would go to show that separate amounts were charged for the value of the goods and separate amounts were charged towards transportation and loading and unloading and that in the premise of this established fact and in the light of the judgment of the Supreme Court in State of Karnataka and Another Vs. Bangalore Soft Drinks Pvt. Ltd., , the Tribunal should have allowed the appeals.

5. On the other hand, the learned Special Government pleader for Taxes drawing attention of the Court to Clauses (b) and (c) of Section 21(s) of the APGST Act which defines the term "turnover" would contend that no exception could be taken to the opinion arrived at by the Tribunal. The learned Special Government pleader would also submit that it is the specific case of the petitioner-dealer that there are separate agreements for value of the goods as well as for transportation and loading and unloading chares, and having taken such a plea, the petitioner for the reasons best known to it did not place any material whatsoever before the authorities or before the Tribunal to support that plea. The learned Government Pleader would also draw our attention to the fact that though show-cause notice was issued to the petitioner on 5.11.1988 inviting objections, if any, to the proposed assessment, the petitioner though received the notice did not choose to file any objections and therefore, it is not permissible at this distance of time to claim that there are two separate agreements between the petitioner and its customers.

6. The term turnover as defined u/s 2 1(s) of the APGST Act means among other things "any other sum charged by the dealer for anything done in respect of goods sold at the time of, or before, the delivery of goods under clause (b) and any other sum charged by the dealer, whatever be the description, name or object thereof, as provided in clause (c). Therefore, it is apparent that any other sum charged by the dealer under any description would also be brought under the meaning of "turnover" as defined u/s 2 1(s) of the APGST Act. The petitioner specifically pleaded before the authorities below that there are separate contracts

one for the value of the goods and the other for transport and loading and unloading charges, and that plea was actually abandoned before us by the learned counsel for the petitioner. On the other hand, the learned counsel would contend that an inference has to be drawn from the fact established, viz., that the petitioner has produced the sale invoices and debit notes before the Appellate Deputy Commissioner to show that separate amounts were charged for the value of the goods and separate amounts were charged for transportation and loading and unloading of the goods and therefore, two separate agreements exists. In maintaining this position, the learned counsel would seek to draw support from the judgment reported in THE GOVERNMENT OF MADRAS vs. SIMPSON AND CO. LTD. 21 STC 21.

7. We do not find any merit in these Tax Revision Cases. Firstly as held and reiterated quite often that the Tribunal is the final fact finding authority. The finding recorded by the Tribunal in these TRCs is undoubtedly a finding on a question of fact. The only thing to be seen by us is whether that finding of the Tribunal suffers from any flaw of perversity. In other words, the question is whether there was a reasonable ground for the Tribunal in arriving at such a finding in the facts and circumstances of the case and the evidence adduced before it. Since the petitioner has failed to place any material whatsoever, in support of the specific plea taken by it that there are separate agreements and contracts, there is nothing wrong on the part of the Tribunal in disbelieving the integrity of the invoices and copies of the debit notes produced by the petitioner in forming the opinion. Another weighty circumstance to be noticed is that when the Assessing Office issued show cause notice on 5.11.1988 proposing to levy tax on the turn over including the charges collected by the petitioner-dealer towards transportation and for loading and unloading, the petitioner-dealer for the reasons best known to it, did not file any objections. If the plea of the petitioner is truthful, the normal conduct of it would have been to oppose the proposal made in the show cause notice. The two cases cited by the learned counsel for the petitioner are distinguishable on facts. In Bangalore Soft Drinks Limited case (1 supra) admittedly there existed two separate contracts and they were placed before the authorities and the Court. In Simpson and Co. Ltd. case (2 supra), the respondent therein was the dealer in motor-cars, motor parts and accessories and it also dealt with the sale of Perkins Diesel Engines and it did not manufacture or fabricate Perkins Engines, but fitted the engines to the vehicles of the customers and made a consolidated amount in the bill. In the bill made out by the respondent-dealer, the costs for supplying and fitting are separately made. In the fact situation of that case, the High Court held that the transactions were not truly sales of engines to the customers, but they really amounted to works contracts under which for a consolidated amount the engines were fitted in to the vehicles. When that opinion was assailed before the Apex Court, the Apex Court held that the bill evidenced an agreement to sell a particular diesel engine, the price of which was separately mentioned in the bill, and to fit it in the customer's vehicle and therefore, the engine was contracted to be delivered as

an engine and afterwards affixed to the customer's vehicle. In that view of the matter the Supreme Court confirmed the view taken by the Tribunal that the contract was a works contract. That opinion of the Supreme Court in no way support the case of the petitioner herein, having regard to its specific plea noticed above and total failure to sustain that plea by adducing any substantive acceptable legal evidence. Accordingly we do not find any merits in these Tax Revision cases.

8. In the result, these Tax Revision cases are dismissed. No costs.