
(1960) 02 AP CK 0003
In the Andhra Pradesh High Court
Case No : Appeal No. 254 of 1956

Moosa Mohammad Sons

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 05-02-1960

Acts Referred:

Constitution of India, 1950 — Article 286

Citation : (1960) 11 STC 460

Hon'ble Judges : Umamaheswaram, J; Syed Qamar Hassan, J

Bench : Division Bench

Advocate : E. Venkatesam and D. Satyanarayana, for the Appellant; The Second Government Pleader and D. Venkatappayya Sastri, for the Respondent

Final Decision : Allowed

Judgement

Umamaheswaram, J.—This is an appeal directed against the judgment and decree of the Subordinate Judge of Visakhapatnam dismissing the plaintiffs' suit, O.S. No. 53 of 1954. The suit was filed for recovery of a sum of Rs. 15,816-10-3 that was collected by the State of Andhra under the provisions of the Madras General Sales Tax Act, hereinafter referred to as "the Act". The case of the plaintiffs was that as all the sales were effected outside the State for consumption they were not liable to pay the sales tax under the Act. The State of Andhra contended that the sales were not effected outside the State for consumption, that the payments made by the plaintiffs were voluntary and that the suit was barred by time. The Subordinate Judge held that the sales were effected outside the Andhra State and for consumption within other States, that the payments were made voluntarily and that they could not be recovered in the suit and that the suit was also barred by limitation. The finding that the sales were effected outside the State and for consumption is not challenged before this Court.

2. As regards the plea of limitation, there is no force. In Appeals Nos. 170 and 171 of 1956 dated 12th November, 1959, we held that the monthly returns

provided under the rules are only for purpose of convenience and that the assessments were only tentative assessments and that the period of limitation starts only from the date of the final assessment. Following that decision we hold that the suit is in time inasmuch as the final assessment was made under exhibit A-1 on 31st March, 1951 and the suit was filed on 25th March, 1954.

3. Following the decision of the Supreme Court in Sales Tax Officer, Banaras and Others Vs. Kanhaiya Lal Mukundlal Saraf, we hold that the plaintiffs are entitled to recover the amounts collected from the plaintiffs under the Act. Bhagwati, J., delivering the judgment of the Supreme Court, held that there is no warrant for placing a limited construction on the word "mistake" in 72 of the Indian Contract Act and that it is wide enough to cover not only a mistake of fact but also a mistake of law. As the terms of the Explanation to Article 286(1)(a) of the Constitution apply to the facts of this case, the collection of the tax under the Act is illegal and the payments that were made by the plaintiffs were made only under a mistake of law. It is conceded that the terms of 18 of the Madras General Sales Tax Act of 1939 do not apply to a case of this description : Vide The Province of Madras Vs. Chekka Satyanarayanamurthy,

4. In the result, the appeal is allowed with costs, both in this Court and in the Court below.