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In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 2 of 2001

M/s. A.P. Paper Mills Limited — APPELLANT

Vs

The State of Andhra Pradesh — RESPONDENT

Date of Decision : 21-01-2014

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 15, 5(1)

Citation : (2014) 59 APSTJ 41 : (2014) 69 VST 242

Hon'ble Judges : T. Sunil Chowdary, J;G. Rohini, J

Bench : Division Bench

Advocate : S. Dwarakanath, Advocate for the Appellant; P. Balaji Varma, Spl. S.C. for C.T, Advocate for the Respondent

Judgement

G. Rohini, J..

1. M/s. A.P. Paper Mills Limited, Rajahmundry, a registered dealer under the A.P. General Sales Tax Act, 1957 (for short "the A.P.G.S.T. Act") is the petitioner in all these revision cases filed against the common order dated 27.09.1999 passed by the A.P. Sales Tax Tribunal, Hyderabad in T.A. Nos. 323, 325, 360, 362 and 324 of 1996. The facts in brief are as under:

The revision petitioner is engaged in the business of manufacture and sale of paper. In the course of its business the petitioner purchases burnt lime and consumes in its manufacturing activity. The petitioner claims that the burnt lime was purchased from the dealers within the State who were granted exemption from payment of tax on sale of goods by G.O.Ms. No. 2566 dated 11.06.1980 and therefore no tax need be paid by the petitioner u/s 6A of the A.P.G.S.T. Act on the turnover relating to purchase of burnt lime. The said claim was accepted by the Assessing Authority and accordingly the assessments were completed for the Assessment Years 1987-88 to 1991-92.

2. However, the Deputy Commissioner revised all the said five assessments and got the turnover relating to purchase of burnt lime to tax u/s 6A of the A.P.

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General Sales Tax Act. Aggrieved by the same the petitioner filed appeals before the Sales Tax Appellate Tribunal of A.P. Hyderabad. By the common order under revision the Tribunal upheld the decision of the Deputy Commissioner. Hence, these revision cases u/s 22(1) of the A.P.G.S.T. Act raising the following proposed question of law:

Whether the petitioner is liable to pay purchase tax u/s 6A of the A.P. General Sales Tax Act in respect of burnt lime notwithstanding the fact that the dealers from whom the petitioner purchased the burnt lime were exempted from payment of Sales Tax?

3. We have heard the learned counsel for both the parties in detail.

4. As could be seen from the order under Revision, the contention on behalf of the petitioner before the Tribunal below was that the dealers from whom they purchased the burnt lime had in fact collected the tax and'' that the purchase price was inclusive of all taxes and therefore the tax should have been collected from the said dealers on sale but not from the petitioners who are only purchasing dealers.

5. The said contention was not accepted by the Tribunal holding that there was no proof to hold that the selling dealers had collected the tax from the petitioner. The further contention that the petitioner is not liable to pay tax on the ground that the selling dealers are exempted from tax was also rejected observing that it is upto the purchasing dealer to recover the taxes illegally collected by the selling dealers by taking appropriate legal action.

6. Though the finding recorded by the Tribunal that there was no proof to hold that the selling dealers had collected the tax from the petitioner is not assailed before us, it is submitted by Sri Vemireddy Bhaskar Reddy, the learned counsel for the petitioner that the question whether the burden of tax can be shifted to the purchaser when the goods which are liable to single stage tax under the statute are exempted from payment of sales tax is no longer res integra in view of the recent decision in Peekay Re-rolling Mills (P) Ltd. Vs. The Assistant Commissioner and Another, . In the light of the law laid down in the said decision, the learned counsel submits that the burden of tax cannot be shifted to the petitioner since the dealers from whom the petitioner purchased burnt lime were admittedly exempted from payment of sales tax.

7. However, Sri P. Balaji Varma, the learned Senior Standing Counsel for Commercial Taxes appearing for the respondents sought to distinguish on the ground that in Peekay Re-Rolling Mills Private Limited''s case (supra) the Supreme Court had considered the tax liability of the purchaser with regard to "declared goods". According to the learned Standing Counsel, the issue involved in the present case is squarely covered by the law laid down in The State of Tamil Nadu Vs. M.K. Kandaswami and Others, wherein it is held that the purchasing dealer is liable to pay tax on his purchase turnover if any of the conditions (a), (b) & (c) of Section 7A of the Madras General Sales Tax Act, 1959 is satisfied. It

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is pointed out by the learned counsel that Section 7A is in pari materia to Section 6A of the A.P.G.S.T. Act.

8. Before adverting to the rival submissions noticed above, it is necessary to look into the relevant provisions of the A.P.G.S.T. Act.

9. Section 5 of the A.P.G.S.T. Act which provides for levy of tax on sale or purchases of goods and Section 6 which provides for tax in respect of declared goods read as under:

5. Levy of tax on sales or purchases of goods:-

(1) Save as otherwise provided in this Act every dealer shall pay tax under this Act for each year on every rupee of his turnover of sales or purchases of goods in each year irrespective of the quantum of his turnover at the rates of tax and at the points of levy specified in the Schedules.

(2) For the purpose of this section and the other provisions of this Act, the turnover 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.

(4) The taxes under this section shall be assessed, levied and collected in such mariner, 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 (i) of this proviso, he shall not be taxed again in respect of any sale of such goods effected by him.

(Sub-section (i) was substituted for sub-sections (1) & (2) by Act No. 4 of 1989)

6. Tax in respect of declared goods:- 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 third Schedule on his turnover of such sales or purchases for each year 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.

Provided that where any such goods on which a tax has been so levied are sold in the course of inter State trade or commerce, and tax has been paid under the Central Sales Tax Act, 1956 in respect of the sale of such goods in the course of inter State trade or commerce the tax so levied, (shall be reimbursed to the person making such sale in the course of inter State trade or commerce,) in such manner and subject to such conditions as may be prescribed.

10. Section 6A which provides for levy of tax on turnover relating to purchase of certain goods may also be extracted hereunder:

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6A. Levy of tax on turnover relating to purchase of certain goods:- Every dealer, who in the course of business,--

(i) purchases any goods (the sale or purchase of which is liable to tax under this Act) from a registered dealer in circumstances in which no tax is payable u/s 5 or u/s 6, as the case may be, or.

(ii) purchases any goods (the sale or purchase of which is liable to tax under this Act) from a person other than a registered dealer, and

(a) consumes such goods in the manufacture of other goods, for sale or consumes them otherwise, or:

(b) disposes of such goods in any manner other than by way of sale in the State or.

(c) despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter State trade or commerce,

shall pay tax on the turnover relating to purchase aforesaid at the same rate at which but for the existence of the aforementioned circumstances, the tax would have been leviable on such goods u/s 5 or Section 6.

11. A reading of Section 6A shows that every dealer who in the course of business purchases any goods, the sale or purchase of which is liable to tax under the Act, from a registered dealer in the circumstances in which no tax is payable u/s 5 or u/s 6 as the case may be and consumes such goods in the manufacture of other goods for sale or consumes them otherwise, shall pay tax on the turnover relating to purchase at the same rate at which the tax would have been leviable on such goods u/s 5 or Section 6.

12. Section 2(f) of the A.P.G.S.T. Act defines ''declared goods'' as goods declared u/s 14 of the Central Sales Tax Act, 1956 to be of special importance in Inter-State Trade or Commerce. Burnt lime is admittedly not one of the declared goods and therefore Section 6 is not applicable.

13. It is also not in dispute that "burnt lime" falls under Item 212 of the First Schedule to A.P.G.S.T. Act in respect of which single point tax is leviable u/s 5 at the point of first sale in the State at the rate of 8%. Thus, in the normal course the selling dealer is liable to pay the tax on his turnover of sale of the burnt lime. However, the dealers from whom the petitioner purchased the burnt lime were exempted from tax under G.O.Ms. No. 2566, Revenue (S), dated 11.06.1980, since they were financed by the A.P. Khadi & Village Industries Board and the Khadi & Village Industries Commission.

14. A copy of G.O.Ms. No. 2566, dated 11.06.1980 is placed before us and a perusal of the same shows that it was issued in exercise of the powers conferred u/s 9(1) of the A.P.G.S.T. Act exempting from the tax payable under the Act, the purchase or sale of goods as the case may be made by the categories of industrial units mentioned in the Annexure therein provided the said units are

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covered by the Certificate issued by the A.P. Khadi & Village Industries Board. "Lime Manufacturing" is included as Item 12 in the Annexure to the said notification at the relevant point of time. Thus, it is not in dispute that the dealers at Piduguralla from whom the petitioner purchased burnt lime were exempted from payment of tax on sales of goods during the period covered by the assessments in question.

15. In view of the sales tax exemption so granted to the dealers from whom the petitioner purchased burnt lime, the learned counsel for the petitioner contends that the goods purchased by the petitioner cannot be subjected to purchase tax in the hands of the petitioner u/s 6A of the A.P.G.S.T. Act.

16. Placing reliance upon Peekay Re-Rolling Mills Limited''s case (supra) it is vehemently contended by the learned counsel for the petitioner that in view of the exemption from tax granted in favour of the selling dealers of the petitioner, the impugned action of the respondents in levying tax on the turnover relating to purchase of burnt lime by the petitioner u/s 6A is arbitrary, illegal and without authority of law.

17. On the other hand, it is contended by the learned Senior Standing Counsel for Commercial Taxes that the exemption so granted in favour of selling dealers is not a general exemption but it is a qualified exemption which was allowed at the point of sale by a particular category of dealers and therefore the petitioner who is a purchaser and who manufactures different types of goods using burnt lime as a raw material is not entitled to claim exemption.

18. It is further contended by the learned Senior Standing Counsel that the ratio laid down in Peekay Re-Rolling Mills Limited''s case (supra) wherein the Supreme Court considered the effect of exemption granted in respect of "declared goods" has no application to the case on hand. It is also submitted by him that in fact the decision in M.K. Kandaswamy''s case (supra) wherein the Supreme Court interpreted, the scope and object of Section 7A of the Madras General Sales Tax, 1959, which is in pari materia to Section 6A of A.P.G.S.T. Act, 1957 applies to the present case.

19. We have carefully gone through the decisions in Peekay Re-Rolling Mills Limited''s case (supra) and M.K. Kandaswamy''s case (2 supra).

20. In Peekay Re-Rolling Mills Limited''s case (supra) the appellant therein is a registered dealer under the Kerala General Sales Tax Act, 1963 and it carried on business of Steel Re-rolling Mills. The raw material used by the appellant in the production of bars and rods is steel ingots which the appellant either manufactures or purchases from other manufacturers from within or outside the State. By virtue of a notification issued u/s 10(1) of the Kerala General Sales Tax Act, purchase of steel ingots effected by the appellant from the manufacturing units within the State are exempted from the payment of sales tax on the sale of steel ingots. Having purchased the steel ingots from the dealers with the State who were exempted from payment of tax, the appellant consumed the same in

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the manufacture of bars and rods during the assessment year 1994-95. The return submitted by the appellant declaring the taxable turnover at ''Nil'' was accepted by the assessing officer and the assessment was completed. However the assessment was sought to be revised claiming that the ingots purchased by the appellants were goods liable to tax under the State Act and since the supply of such ingots did not suffer any tax at the time of sale due to the exemption, the purchase turnover of the ingots consumed in the manufacture by the appellant attracted liability to tax u/s 5A of the Kerala General Sales Tax Act, 1963. Thus it was alleged in the show-cause notice that the purchase turnover of the ingots had escaped assessment u/s 5A and therefore the turnover is liable to be taxed at the rate of 4%. Aggrieved by the same, the appellant filed writ petitions before the High Court of Kerala which were disposed of with a direction to the appellant to file objections to the show-cause notices. The Writ Appeals preferred by the appellant were dismissed by the Division Bench holding on merits that the expression "levy" includes collection of tax as well and not mere imposition and that in the absence of collection of tax there is no levy and since the goods were exempted from payment of sales tax the goods could be subjected to levy of purchase tax u/s 5A of Kerala General Sales Tax Act. It was further held that where there is no collection of tax there is no levy and accordingly the goods which are not subjected to levy of tax at the point of sale could be subjected to levy of purchase tax u/s 5A. The appellant carried the matter to the Supreme Court contending that goods being declared goods, u/s 14 of the Central Sales Tax Act, 1956, they are subjected to limits placed by Section 15 of the Central Sales Tax Act and therefore if iron and steel are subjected to a single point levy of tax at the first point of sale, then there is no question of a second levy or charge at any subsequent point of sale or purchase. It was also contended that in view of Section 5(1) read with Second Schedule to Kerala General Sales Tax Act, the burden of tax could not be shifted to the purchaser. On the other hand, it was contended on behalf of the State that in the case of declared goods the conditions'', imposed by Section 15 of the Central Sales Tax Act have to be complied with and the levy could not be at more than one stage but Section 5A of the Kerala General Sales Tax Act operates by its own force in cases where taxable goods did not suffer tax u/s 5.

21. Under the above noticed facts and circumstances, having formulated the question as to whether the tax sought to be levied u/s 5A of Kerala General Sales Tax Act would amount to tax at a second stage and therefore violates Section 15 of the Central Sales Tax Act, it was held by the Supreme Court that exemption can only operate when there has been a valid levy, for if there was no levy at all, there would be nothing to exempt. Referring to the decisions in Pine Chemicals Ltd. and Others Vs. Assessing Authority and Others, and Associated Cement Companies Ltd. Vs. State of Bihar and Others, wherein an identical question was considered, it was further held that despite an exemption, the liability to tax remains unaffected and that only the subsequent requirement of payment of tax to fulfill the liability is done away with. Thus it was concluded that the liability to

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tax or taxability u/s 5 of the Kerala General Sales Tax Act remains unaffected by an exemption u/s 10 of the said Act and consequently the respondent cannot validly shift the burden of tax to the purchaser u/s 5A for the same would violate the condition of single stage tax u/s 15 of the Central Sales Tax Act.

22. It is no doubt true that in the above said decision the Supreme Court considered the tax liability with regard to "declared goods" and in the facts of the said case it was held that the burden of tax cannot be shifted to the purchaser since the same would be violative of the condition of single stage tax u/s 15 of the Central Sales Tax Act. However the ratio laid down was to the effect that the collection and levy are distinct and that it does not logically follow that absence of collection means an absence of liability.

23. Coming to the decision of M.K. Kandaswamy''s case (supra) in which the Supreme Court considered the interpretation and validity of Section 7A of the Madras General Sales Tax Act, 1959 which is in pari materia to Section 6A of the A.P. General Sales Tax Act, 1957, it was held:

...Section 7A itself is a charging section. It creates a liability against a dealer on his purchase turnover with regard to goods, the sale or purchase of which though generally liable to tax under the Act, have not due to the circumstances of particular sales, suffered tax under Sections 3, 4 or 5 and which after the purchase, have been dealt by him in any of the modes indicated in clauses (a), (b) & (c) of Section 7A(1).

On a careful reading, it is clear to our mind that in M.K. Kandaswamy''s case (supra) the question as to whether in case of exemption granted to the selling dealer the burden of tax can be shifted to the purchaser was not at all gone into, but the Court had only explained the scope and object of the charging section i.e., Section 7A of the Madras General Sales Tax Act, 1959.

24. In fact Peekay Re-Rolling Mills Private Limited''s case (supra) was decided taking note of the ratio laid down in M.K. Kandaswamy''s case (supra) with regard to interpretation of Section 5A of Kerala General Sales Tax Act.

25. For the aforesaid reasons, we find force in the submission of the learned counsel for the petitioner that the ratio laid down in Peekay Re-Rolling Mills Private Limited''s case (supra) applies in all fours to the case on hand and that the fact that in the said decision the Supreme Court dealt with "declared goods" does not make any difference so far as the principle of law laid down with regard to the impact of exemption on the liability to tax is concerned.

26. Accordingly, following the decision in Peekay Re-Rolling Mills Private Limited''s case (supra), we hold that the petitioner cannot be made liable to pay the purchase tax u/s 6A of the A.P. General Sales Tax Act, 1957.

27. In the result, the orders of the Tribunal below as well as the Appellate Deputy Commissioner are hereby set aside and all the Revision cases are allowed. No costs. Consequently the miscellaneous petitions, if any, pending in all the

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Revision Cases shall stand closed.

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