

(1997) 12 AP CK 0075

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 23400, 23401, 23402, 23403, 23404, 23405, 23406, 23407, 24432, 24433, 24445, 24582, 24583, 24623, 24691, 24692, 24874, 24787, 24789, 25024, 25080, 25462, 25507, 25890, 25894, 25899, 26128, 26344, 26671, 26672, 26673, 26674, 26770, 268

Narayana Reddy

APPELLANT

Vs

Divisional Forest Officer and Others

RESPONDENT

Date of Decision : 31-12-1997

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 19, 21
Constitution of India, 1950 — Article 226

Citation : (1998) 109 STC 585

Hon'ble Judges : P. Venkatarama Reddi, Acting C.J.; A.S. Bhate, J

Bench : Division Bench

Advocate : S. Krishna Murthy, S.V.R. Subrahmanyam, B. Srinivas, K. Jaya Kumar, T.V.S. Kumar and V. Ramakrishna, for the Appellant; Rama Krishna Murthy, SC for APFDC, Government Pleader for Forests and Special Government Pleader for Taxes, for the Respondent

Judgement

P. Venkata Rama Reddi, Ag. C.J.

1. The petitioners who are "beedi leaves contractors" seek issuance of writs directing the respondents-forest authorities to release the abnus leaves without insisting on the payment of sales tax. Pursuant to the tenders called for by A.P. Forest Development Corporation (hereinafter referred to as "Corporation") the petitioners were awarded contracts for the "purchase" of beedi leaves in the specified units for the 1997 season. The Government appointed the Corporation as "agent" for the Forest Department for the purpose of collection and disposal of abnus leaves in the forest areas. The Divisional Forest Officer entered into agreements with the petitioners on behalf of the agent-A.P. Forest Development Corporation which is owned and controlled by the State Government. The broad features of the contract are as follows :

2. The petitioners, who are described as "purchasers" are required to do pruning of abnus plants in the unit after obtaining prior permission and will have to establish collection centres known as "khallas" and keep their representative at each collection centre for the purpose of collection of abnus leaves. At the collection centres, the leaves in raw form, got plucked and collected by the Corporation, are entrusted to the purchasers. The purchaser is obliged to reimburse the collection charges to the Corporation. The subsequent operations like curing, bagging and transportation to the Corporation's godowns are required to be done by the purchaser. The leaves will be kept in the godowns approved by the Divisional Forest Officer and they remain in the godowns at the risk of the purchaser but under the control of Divisional Forest Officer. The department also puts its own locks to the godowns. The petitioners are allowed to remove/take delivery of the bags on the strength of the permits issued by the officials of the Corporation. The permits are issued only after payment of the sale amount calculated at tendered rate, the collection charges payable and the sales tax thereon. The sale amount is also known as "royalty". It is enjoined in clause (7) of the agreement that the purchaser shall not become the owner till all the amounts due are paid to the Corporation. The sale amount and collection charges are payable in three equal instalments. On payment of each instalment, proportionate quantity of beedi leaves is released. The abnus leaves are also released on submission of bank guarantee subject to certain conditions.

3. It is the contention of the petitioners that sales tax is not liable to be paid on the transaction inasmuch as there is no sale involved. It is submitted that the essence of the contract is the conferment of right to take away beedi leaves from the plants and it creates an interest in the land. In other words, the transaction, according to the petitioners, is in the nature of profit-a-prendre. It is contended that royalty is charged for conferring the said benefit but not as a consideration for sale. It is submitted that the use of the words "sale amount", "purchaser" are not conclusive.

4. Reliance is placed on the decision of the Supreme Court in *State of Orissa and Others Vs. Titaghur Paper Mills Company Limited and Another*, .

The validity of the Circular issued by the commissioner of Commercial Taxes (6th respondent) in reference No. AI(3)/2118/97 dated July 3, 1997 is also assailed. The circular reads as follows :

"With reference to the letter cited, I am to inform that whatever amount is charged by the seller towards sale consideration, it constitutes the turnover. Therefore, the Andhra Pradesh Forest Development Corporation Ltd., is liable to tax on the total amount so collected from the buyer even though it is collected under different heads".

5. The learned Government Pleader submits that there is an outright sale of movable property, i.e. abnus leaves packed in standard bags and that all charges paid to the Corporation prior to the actual delivery which are in the nature of pre-

sale expenses are includible in turnover. It is also pointed out that the petitioners cannot wriggle out of the obligation to pay the sales tax as per the terms of agreement.

6. We are of the view that the questions raised in the writ petitions cannot be properly decided in the writ proceedings under article 226 of the Constitution. There are various aspects, some of which factual, that have to be gone into in order to decide the controversy. The analysis of the terms of the agreement, the exact modality of operations and reference to the relevant Rules made under the Andhra Pradesh Forests Act, Act, etc., have to be made before reaching the conclusion. The questions that would arise for consideration are : whether the sale of abnus leaves is involved or, whether the transaction is in the nature of profit-a-prendre, and if it is a sale, whether it is taxable in the hands of A.P.F.D.C. and whether collection charges are pre-sale expenses includible in the turnover. The decision of the Supreme Court in State of Orissa and Others Vs. Titaghur Paper Mills Company Limited and Another, relied upon by the learned counsel does not squarely apply to the facts of the case. The bamboo contracts considered therein are somewhat different. In any case, a comparative study of the agreements involved is necessary in order to decide whether the ratio of the said decision applies to the instant case. At best, the points raised in the writ petitions can be said to be debatable and nothing more. We therefore decline to go into those questions.

7. Another aspect, which we cannot lose sight of is that the petitioners undertook to pay sales tax as per the provisions of the Andhra Pradesh General Sales Tax Act, 1957, vide clause (11) of the agreement. Thus, the liability to pay the sales tax was very much within the contemplation of the parties. But, the petitioners now contend that the sales tax is not liable to be paid as per law. Thus, what the petitioners are now being called upon to meet is not an unforeseen tax liability. In this fact-situation, we are not inclined to exercise our extraordinary jurisdiction and give an adjudication on merits. We would prefer to leave the relevant issues to be decided by the competent authorities under the Sales Tax Act. We are fortified in our view by the decision of the Supreme Court in State of U.P. and others Vs. Bridge and Roof Co. (India) Ltd., .

8. However, the petitioners should not be left remediless to question the action of the Corporation in collecting the sales tax from the petitioners and remitting it to the Sales Tax Department. It cannot be denied that if there is no liability to pay sales tax under the A.P. General Sales Tax Act, the collection in the name of sales tax is impermissible in law and if it is ultimately decided by the competent authority or Tribunal that no tax is liable to be paid on the transactions, the amount paid towards sales tax is liable to be refunded to the petitioners. Keeping this in view, the petitioners must be provided with a remedy to question the assessments that may be made against the A.P. Forest Development Corporation which is said to be a registered dealer, filing the returns. Sections 19 and 21 of the A.P. General Sales Tax Act provide that any dealer objecting to any order or

proceeding recorded can file an appeal. Though the assessment is made on the Forest Development Corporation, the petitioners dispute the liability of Corporation and consequently their liability to pay tax on the disputed turnover. The petitioners are more aggrieved because it is from their coffers that the tax is being realised.

9. Keeping these considerations in view, we dispose of the writ petitions with the following directions :

(1) The proceedings for assessment against the A.P. Forest Development Corporation for the current year shall be finalised by the concerned assessing authority within a period of eight months from today. The Corporation shall forward the objections, if any, filed by the petitioners to the assessing authority who will consider the same before finalising the assessment.

(2) Soon after the assessment order is communicated, it is open to the Forest Development Corporation to question the same. In any case, xerox copies of the assessment order shall be furnished by the Corporation to the petitioners on a requisition made in this behalf on the address given by them, within two weeks from the date of receipt of assessment order.

(3) The petitioners may within a month thereafter file appeals together with the xerox copies of assessment orders. Such appeals shall not be rejected for the reason that the appeal memorandum is not accompanied by the original or authenticated copy of the assessment order or on the ground that the petitioners were not parties to the assessment.

(4) If the competent appellate authority or Tribunal finds that there is no liability to pay tax on the disputed transactions, the amount of tax paid to the Sales Tax Department by the Forest Development Corporation should be refunded to the petitioners within three months from the date of the order declaring such non-liability.

10. The writ petitions are, accordingly, disposed of. No costs.

Three weeks time is granted for payment of the balance amount due towards sales tax.

11. Writ petitions disposed of accordingly.