(2011) 12 AP CK 0105

In the Andhra Pradesh High Court

Case No : Tax Revision Case No''s. 131 of 2010 and 91 of 2011

Plywood Traders APPELLANT

Vs

State of A.P. RESPONDENT

Date of Decision : 30-12-2011

Acts Referred:
Andhra Pradesh General Sales Tax Act, 1957 — Section 22(1)

Citation : (2012) 55 VST 441

Hon'ble Judges : V.V.S. Rao, J;B.N. Rao Nalla, J

Bench : Division Bench

Advocate : A.K. Jaiswal, for the Appellant; P. Balaji Varma, Special Standing Counsel for Commercial Taxes, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—These two revisions u/s 22(1) of the Andhra Pradesh General Sales Tax Act, 1957 ("the Act", for brevity) can be disposed of by common order as they not only arise out of one order passed by the Sales Tax Appellate Tribunal on February 13, 2009 in T. A. Nos. 147 of 2003 and 872 of 2004 but also relate to the same dealer. The petitioner, a business firm in plywoods and general goods, is a registered dealer on the rolls of the Commercial Tax Officer (CTO), N.S. Road, Hyderabad. For the assessment year 1995-96, the firm was assessed allowing the rebate of Rs. 2,44,961 as per section 5(3) read with entry 17 of the Sixth Schedule. The rebate was with reference to the tax paid by the dealer at the preceding point of sale on plywood. Be that as it is, the assessment was revised by the Deputy Commissioner of Commercial Taxes, Charminar Division, Hyderabad, reversing the rebate allowed by the assessing authority, Being aggrieved by the order of the revisional authority dated October 12, 2002, the petitioner filed T. A. No. 147 of 2003, which was dismissed holding that the petitioner failed to discharge the burden of proof of u/s 7A of the Act. Aggrieved by the said order of the Tribunal, Tax Revision Case No. 91 of 2011 is filed. The other tax revision case is filed against T. A. No. 872 of 2004 which relates to the assessment year 1998-99 with similar factual background.

2. The counsel for the petitioner would submit that plywood is exigible to sales tax at every point of sale as per the Sixth Schedule and therefore, the tax has to be determined in accordance with section 5(3) read with second proviso to Explanation II to the Act. He would challenge the adverse finding of the revisional authority against the petitioner that they have failed to disclose the closing stock and the opening stock as perverse. Secondly, he would submit that though the assessment was accepted, the revisional authority was in error in adding the turnover of Rs. 5,57,623 without putting the petitioner on notice. Per contra, the Special Counsel for the Commercial Taxes would submit that the petitioner never produced the bills covering the purchases he made from the selling dealer and in the absence of any such bills, it would not be possible to determine the tax as per the Explanation and therefore, the petitioner has to be assessed in accordance with the second proviso to the Sixth Schedule. He also would sustain the impugned order of the Tribunal with reference to section 7A of the Act which requires the dealer to discharge the burden of proving that the sale or purchase effected by the dealer is not liable to tax or is liable to be taxed at the reduced rate.

3. The point that would arise for consideration is whether the petitioner is entitled to be taxed in accordance with section 5(3) read with second proviso to Explanation II of the Sixth Schedule ?

The point

4. The relevant provisions for appreciating the point are section 5, relevant part in the Sixth Schedule and rule 5 of the Andhra Pradesh General Sales Tax Rules, 1957 ("the Rules", for brevity), which are quoted hereunder :

S. 5. Levy of tax on sales or purchases of goods.--(1) Save as otherwise provided in this Act, every dealer shall pay a 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 rate of tax and at the points of levy specified in this Schedules.

(2) For the purpose of this section arid 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.

(3) The taxes under this section shall be assessed, levied and collected in such manner, 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.

SIXTH SCHEDULE

(As substituted by Act No. 22 of 1995 with effect from April 1, 1995 with amendments up to September 1, 2003)

Goods in respect of which tax is leviable u/s 5

First proviso omitted.

Provided further in respect of goods other than liquor mentioned in this Schedule, tax to be paid at any point of sale other than first point of sale, shall be determined after deducting the tax levied on the turnover of such goods at the immediately preceding point of sale by a registered dealer from the tax leviable on the turnover of the same goods at the point of sale by selling dealer.

Explanation I.--Omitted.

Explanation II.--Provided also that the turnover of a retail dealer in respect of commodities other than liquor for the relevant assessment year shall be exempt from payment of tax in respect of sales other than first sale within the State the goods specified in the Schedule. If in the sale bill issued at the preceding point of sale tax levied is not shown separately, but tax is collected by seller at the preceding point of sale from the buying dealer, for determining the amount of tax levied at the preceding point of sale, for the purpose of this proviso the following formula shall be applied :

Rate of tax x Sale price at the preceding point of sale/100 + Rate of tax

Where the turnover of a dealer is taxable at different taxes, the aforesaid formula shall be applied separately in respect of the turnover of each goods liable to tax :

Provided further that the turnover of a retail dealer in respect of sale of goods other than liquor mentioned in this Schedule, to persons other than dealers at any point of sale other than first point of sale, shall be exempt from payment of tax and that part of turnover of a retail dealer which relates to second and subsequent sales of the goods referred to above to other dealers for effecting accommodation sales by the latter shall also be exempt from tax, if such turnover does not exceed five per cent of the total turnover of that dealer in a year, and a certificate is produced in such manner and form as may be prescribed.

R. 5. (1) Save as provided in sub-rules (2) to (8), the turnover of a dealer for the purposes of these Rules shall be the total amount received by the dealer as the consideration for the sale of the goods.

(2) omitted

(3) In the case of goods liable to tax u/s 6A, the amount paid by the dealer for the purchase of such goods shall be the turnover of the dealer in such goods.

(4) to (8) omitted.

5. On a plain reading of the above provisions, what emerges is as follows. As per the charging section, every dealer shall pay tax on his turnover of sales and purchases of goods at the rates and at the points of levy specified in the Schedules. As per section 5(3) while determining the tax, deductions shall be allowed from the total turnover of the dealer in the manner prescribed. Section 5(4), proviso (i) prohibits double taxation and lays down that in respect of the same transaction, the buyer or seller, but not both, shall be taxed. The Act has Seven Schedules. Plywood is an item of goods dealt with by the Sixth Schedule. Plywood is exigible to tax at every point of sale at 15 per cent in the rupee. The second proviso thereto, however, allows the deduction of tax paid at any point of sale other than first point of sale, and all the goods except the liquor. It means that wherever it is proved by the dealer that tax is paid at the previous point of sale by offering the proof, to that extent the second proviso would be attracted. In case where the dealer is not able to produce the proof or if the sale bill at the preceding point of sale does not show the sales tax having been levied separately, Explanation II is attracted. As per rule 5(1), the total turnover of a dealer shall be the total amount received by the dealer as consideration for the sale of goods. A dealer who claims rebate u/s 5(3) read with the second proviso to VI Schedule has to necessarily produce the proof of the total sale consideration received and the sales tax levied and paid at the previous point of sale. If the same is not shown, Explanation II would be attracted which contains the formula for determining the amount of tax levied at the preceding point of sale.

6. The CTO allowed the tax rebate under the Sixth Schedule for both the years based on cash book, ledger, purchases and sales bills. It was to the tune of Rs. 5,66,166. The Revisional Deputy Commissioner, however, on verification found that allowing rebate on the entire local purchase of plywood without considering the opening and closing stock is not permissible. Therefore, a show-cause notice was issued. In response thereto, the petitioner submitted explanation. Insofar as the rebate is concerned, the dealer relied on the circular issued by the Commissioner for Commercial Taxes, dated November 4, 1994 in support of the contention that whatever the tax was paid at the preceding point must be given rebate, irrespective of the fact that whether the purchase dealer paid excess tax at the preceding point of the sale. This did not find favour with the revisional authority because as observed in the order, dated February 28, 2004, the explanation of the dealer was silent as to the opening and closing stock. For the purpose of allowing rebate in such a case, the burden is certainly on the dealer to satisfy the revisional authority as well as the second appellate authority. They failed to do so. The Tribunal observed that the appellate authority found that the petitioner did not produce any credible evidence for discharging the burden.

Having not produced any evidence before the revisional authority as well as Tribunal, we are afraid the petitioner cannot sustain these revisions u/s 22(1) of the Act. The order of the Tribunal does not suffer from any error of law.

7. One cannot ignore the fact that the Sixth Schedule was substituted with effect from April 1, 1995 by reason of A. P. Act No. 22 of 1995. Therefore, unless and until the opening stock on which the tax was paid at the first point of sale is available and the closing stock is entered correctly, it is not possible to allow the rebate under the second proviso to the Sixth Schedule. In so far as adding of the impugned turnover of Rs. 5,57,623 it was found that even according to the dealer, the disclosed sales stood at Rs. 67,56,133 as against the assessed turnover of Rs. 61,98,510. Hence, when the revisional authority added back the turnover which was not subjected to tax, we do not find any error therein. In the result, for the above reasons, these revisions must fail and they are accordingly dismissed without any order as to costs.