(1994) 12 AP CK 0006

In the Andhra Pradesh High Court

Case No : T.R.C. No. 18 of 1987

Rajendra Oil Mill and Refinery APPELLANT

Vs

State of Andhra Pradesh RESPONDENT

Date of Decision : 27-12-1994

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 22(1)
Central Sales Tax Act, 1956 — Section 5, 5(1)

Citation : (1995) 1 ALT 436 : (1995) 97 STC 192

Hon'ble Judges : S.S. Mohammed Quadri, J;A.S. Bhate, J

Bench : Division Bench

Judgement

Syed Shah Mohammed Quadri, J.—The dealer, an assessee under the Andhra Pradesh General Sales Tax Act, 1957, for short "the State Act", is the petitioner in this tax revision case, filed u/s 22(1) of the State Act against the order of the Sales Tax Appellate Tribunal in T.A. No. 166 of 1979, dated August 25, 1986.

2. The petitioner deals in castor oil. For the assessment year 1973-74 he claimed exemption of turnover on the ground that the sales were "export sales". In respect of a part of the turnover exemption was allowed. In respect of that part for which the claim was rejected, the petitioner filed an appeal before the Assistant Commissioner. The appeal was partly allowed holding that a part of disputed turnover related to inter-State sales but not export sales. However, the appellate authority remanded the matter to the assessing authority, viz., Commercial Tax Officer, to enable the petitioner to produce "C" forms regarding turnover which was not exempted. Against the order of the appellate authority, the petitioner filed further appeal before the Sales Tax Appellate Tribunal. The Tribunal upheld the order of the Assistant Commissioner and dismissed the appeal by the order under revision. Hence, the dealer has come up in revision.

3. The petitioner was exporting castor oil but with effect from April, 1973, the State Trading Corporation became the canalising agent for export. The State Trading Corporation would obtain letter of credit from the foreign buyer in the

course of its activity of promoting trade and would ask the local dealer to supply the goods of the specification given by the foreign buyer. In the bill of lading the dealer will he shown as consignor for the State Trading Corporation and the invoices would he raised on the foreign buyer and that would be on account of the State Trading Corporation. The petitioner claimed that as it was entitled to receive the difference of the invoice amount and the letter of credit on the bankers of the State Trading Corporation, as per the contract, virtually it would be the exporter and, therefore, the sale would have to be treated as the "export sale".

4. The short question that arises for consideration in this case is, whether the transactions in question constitute export sale within the meaning of section 5(1) of the Central Sales Tax Act, 1956.

5. Section 5(1) of the Central Sales Tax Act, 1956, reads as follows :

"5. When is a sale or purchase of goods said to take place in the course of import or export. - (1) A sale or purchase of goods shall be deemed to take place in the course of export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.

(2) ....

(3) ...."

6. Sub-section (1) of the said section raises a presumption as to when a sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India. It provides that if sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India, such sale or purchase would be deemed to take place in the course of export of goods.

7. The learned counsel for the petitioner contended that as the documents of title to the goods were handed over by the petitioner to the State Trading Corporation after the goods were placed on board, the second limb of section 5(1) of the Central Sales Tax Act would be attracted and the sale Would be "export sale". Reliance is placed on a judgment of this Court in Kedia Vanaspathi Ltd. v. Commissioner of Commercial Taxes, Andhra Pradesh [1993] 89 STC 555 in support of the contention that the transaction of sale is in the course of export of the goods outside India. A Division Bench of this Court, of which one of us (Syed Shah Mohammed Quadri, J.) was a party, after analysing section 5 of the Central Sales Tax Act, laid down as, follows :

"Two requirements must be satisfied to claim that a sale of goods had taken place in the course of export within the meaning of the second limb of sub-section (1) of section 5 of the Central Sales Tax Act, 1956. They are : (a) the sale must be effected by transfer of documents of title to the goods; and (b) the transfer of documents must be effected after the goods have crossed the customs frontiers of India. Under the second limb of section 5(1) the date of payment of the price is not the only relevant criteria. It may only be a relevant factor in considering whether the requirements of the second limb have been satisfied."

8. For the purposes of bringing the transaction under the second limb of section 5(1), it has to be shown that the sale was effected by transfer of documents of title to the goods and that such transfer was effected after the goods had crossed the customs frontiers of India, but if the sale had already been effected even before the goods have crossed the customs frontiers of India, the second limb of section 5 cannot be called in aid. In this case, as noticed above, after the goods were boarded on the ship, to receive the payment of price for the goods supplied, documents were submitted by the petitioner after the goods crossed the customs frontiers of India. From this it does not follow that there was export sale by transfer of documents of title to the goods after the goods had crossed the customs frontiers. On the contrary, it shows that the transaction of sale was completed even before the goods set for sail.

9. In Murarilal Sarawagi v. State of Andhra Pradesh [1977] 39 STC 294 the appellants before the Supreme Court, sold manganese ore to M.M.T.C. for export to foreign buyers. The question there was whether the sale of goods was complete within the State of Andhra Pradesh and the M.M.T.C. was the last purchaser within the State; if the M.M.T.C. was the last purchaser within the State it was liable to pay sales tax. Our High Court came to the conclusion that the appellants were the last purchasers within the State as the contract of sale with the M.M.T.C. was integrally connected with the contract entered into by the M.M.T.C. with their foreign buyer so it was a contract of sale entered into by the appellants that occasioned the export and was therefore exempt from sales tax. On appeal to the Supreme Court, it was held that mere mention of f.o.b. price or f.o.b. delivery in the contract between the appellants and the M.M.T.C., which exported the goods to the foreign buyer, under a separate contract with the foreign buyer, would not make the two contracts either integrated or the contract between the appellants and the M.M.T.C., an f.o.b. contract. The Supreme Court pointed out that there could not be two last purchasers in the sale of the same goods within the same State so also there could not be two exporters in respect of the same goods and that the contract between the appellants and the M.M.T.C. and the contract between the M.M.T.C., and the foreign buyers were different. Here also it is contended that the contract of the petitioner with the State Trading Corporation and the contract of the State Trading Corporation with the foreign buyer was so integral that having regard to the facts of the case the petitioner ought to be treated as exporter and the sales in question as export sales. We are afraid, we cannot accept the contention of the learned counsel for the petitioner in view of the pronouncement of the Supreme Court in Sarawagi''s case [1977] 39 STC 294. We have already pointed out above that it was the State Trading Corporation which arranged the foreign buyer and exported the goods to foreign buyer after purchasing the same from the petitioner. Therefore, this judgment is

of no assistance to the petitioner.

10. In Coffee Board v. State of Karnataka [1990] 76 STC 337 (Kar) the Coffee Board exported coffee through State Trading Corporation to the foreign buyer. In the year 1974-75 the turnover of sale of coffee was sought to be assessed to tax under the Karnataka Sales Tax Act. The question there was whether the sale was an "export sale" within the meaning of section 5 of the Central Sales Tax Act. Relying on the contract it was contended by the Coffee Board that the shipping documents were made out in its name and were transferred to the State Trading Corporation after the goods crossed the customs frontiers of India, therefore the sale was export sale within the meaning of the second limb of section 5(1). It was held by the Karnataka High Court that though at the time when the title to the goods were transferred to the State Trading Corporation, the goods had crossed the customs frontiers yet as the sale of the goods to the State Trading Corporation was to an Indian buyer, the sale would not fall within the second limb of section 5(1) of the Central Sales Tax Act; it was a case in which the State Trading Corporation was an Indian buyer and an exporter and to constitute an "export sale", the goods must have a foreign destination and a foreign importer and there must be an Indian exporter and the contract of export must be between an Indian exporter and a foreign buyer.

11. From the above discussion it follows that neither the second limb of section 5(1) nor the first limb of section 5(1) is attracted so as to label the sale as "export sale". It is a clear case of the State Trading Corporation being the Indian buyer and it being the exporter of the goods, the petitioner cannot claim the turnover of the sale which was made in favour of the State Trading Corporation for export of goods to a foreign buyer, is an export sale. We find no merit in the T.R.C. It is accordingly dismissed but in the circumstances, there shall be no order as to costs.

12. Petition dismissed.

