
(1983) 01 AP CK 0011

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 66 of 1979

Ram Krishna Kalwant Rai

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 18-01-1983

Acts Referred:

Citation : (1983) 54 STC 1

Hon'ble Judges : Punneya, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : K. Srinivasa Murthy, for the Appellant; The Government Pleader, for the Respondent

Judgement

Jeevan Reddy, J.—According to entry 1 of the Second Schedule to the Andhra Pradesh General Sales Tax Act, manganese, including manganese ore, is exigible to sales tax on the point of purchase by the last dealer, who buys in the State.

2. The question for decision in this case is, whether the petitioner is the last purchaser of manganese ore within the State of Andhra Pradesh. The relevant facts are the following : The petitioner, a dealer at Delhi, had a permit for exporting certain quantities of manganese ore. Export of manganese ore has to be effected only through M.M.T.C. The Supreme Court has held in Murarilal Sarawagi and Others Vs. The State of Andhra Pradesh, that M.M.T.C. is not a mere canalising agency. It held that in every case of export of manganese ore the sale must be to the M.M.T.C., and that it is the M.M.T.C., which in its turn sells the same to the foreign buyer, though as a fact there may be a direct agreement between the Indian seller and the foreign buyer.

3. Certain quantities of manganese ore was available with one R. B. S. S. Durga Prasad, a party at Tumsar within the State of Maharashtra. This quantity of manganese ore was shipped through Visakhapatnam Port in the name of and on the account of the petitioner in pursuance of an agreement entered into by the petitioner with the M.M.T.C. at its Delhi office. The shipping arrangements were

made by the shipping agents at Visakhapatnam acting under the instructions of the petitioner. The foreign buyer was a Belgian party and the record discloses that the price for the manganese ore was directly remitted to the Tumsar party.

4. The department, having come to know of the transaction, sought to tax the petitioner on the ground that he purchased manganese ore within the State of Andhra Pradesh and he being the last purchaser is liable to pay the sales tax. The petitioner denied not only that he is last purchaser within the State of Andhra Pradesh, but also that he purchased the manganese ore from the Tumsar party. The petitioner was called upon to produce the documents relevant to the transaction between him and the Tumsar party and on his failure to do so, the Commercial Tax officer came to the conclusion that the petitioner was the last purchaser within the State and levied tax. On appeal, the petitioner complained that he was not given sufficient opportunity to produce the documents and also that the determination of the turnover was arbitrary. Accepting the complaint of lack of opportunity, the appellate authority remanded the matter to the assessing authority. In spite of this opportunity, the petitioner again failed to produce any documents or material relevant to the sale of manganese ore by the Tumsar party to him. On this basis the assessing authority again concluded that the petitioner was the last purchaser within the State. On appeal, the Appellate Assistant Commissioner confirmed this finding. The Appellate Assistant Commissioner emphasised the fact that in spite of his repeated demands and requests, the petitioner failed to produce the relevant material. On further appeal the Tribunal considered the entire material which was placed before it and came to the conclusion that the petitioner was the last purchaser within the State.

5. The contention of Sri K. Srinivasa Murthy, the learned counsel for the petitioner, is that this conclusion of the Tribunal is not supported by any evidence and is therefore arbitrary.

6. So far as the contention of the petitioner that he had not purchased the manganese ore from the Tumsar party is concerned, we find the said plea totally unacceptable. The letter of the petitioner dated 11th November, 1963, addressed to his shipping agent, M/s. Sri Ram Shipping Service Private Ltd., Visakhapatnam, clearly establishes such a sale. In this letter, the petitioner stated inter alia :

"We have purchased 7 to 8 thousand tonnes of manganese ore for shipment Our suppliers are M/s. Rai Bahdur Sait Sriram Durga Prasad of Tumsar"

7. From this letter, the correctness whereof is not in question, it is clear that the petitioner had purchased the said manganese ore from the Tumsar party. But this fact is not enough - indeed, of little consequence, in the present case. What has to be established is that the purchase took place within the State of Andhra Pradesh. The Tribunal arrived at this conclusion on the basis of the aforesaid letter and also on the basis of the correspondence which took place between the

petitioner and the Tumsar party, the petitioner and the M.M.T.C., and the petitioner and his shipping agent. The correspondence has been extracted in full in the order of the Tribunal and we have perused the same. None of the letters or correspondence referred to does in any manner suggest that the manganese ore was purchased by the petitioner within the State of Andhra Pradesh. It must be remembered that the manganese ore was with the party at Tumsar and the petitioner is a dealer at Delhi. The mere purchase of the manganese ore by the petitioner from the Tumsar party does in no manner suggest that the purchase is within the State of Andhra Pradesh. Merely because the goods passed through this State or were exported through Visakhapatnam Port in Andhra Pradesh, it does not follow, nor can it be presumed therefrom, that the purchase by the petitioner was within the State of Andhra Pradesh. Similarly the fact that the material was exported by the petitioner is also not indicative or presumptive of the fact that he purchased it within the State of Andhra Pradesh. The order of the Tribunal makes it clear that substantial reliance was placed by it upon the contents of the letter dated 11th November, 1963, which we have already referred to hereinbefore. We are, however, unable to see how this letter suggests, much less establishes, the fact that purchase of manganese ore took place within the State of Andhra Pradesh. It must, therefore, be held that the conclusion arrived at by the Tribunal, that the purchase by the petitioner was within the State of Andhra Pradesh, was based on no evidence.

8. Mr. J. V. Suryanarayana, the learned Government Pleader, contended that the petitioner having refused to produce the relevant material relating to the purchase of manganese ore by him from the Tumsar party, in spite of being called upon to do so by the department and also in spite of being specifically given a further opportunity to produce the same by the appellate authority, cannot be allowed to complain that the said finding is based on no material. The reasoning of the learned Government Pleader runs as follows : Whether the last purchase was within the State or not, was the subject-matter of enquiry by the assessing authority. To arrive at a proper finding on that question, the petitioner was called upon to produce material relating to his purchase, but he failed to do so. In such a case the assessing authority is entitled to draw an adverse presumption and hold that the purchase has taken place within the State. The assessing authority is also justified in presuming, in such a case, that had the relevant material been produced by the petitioner, it would have been adverse to his case and that for this reason the petitioner suppressed the same.

9. We are unable to agree with this reasoning. It is no doubt true that a dealer or an assessee, who is called upon to produce a particular document or material in his possession or custody, is bound to do so, and that on his failure to so produce, an adverse inference can be drawn by the assessing authority. But at the same time it must be remembered that the ultimate burden of proving the taxability is upon the department. In other words it is for the department to show that the taxable event has taken place and in this case the taxable event is the last purchase, within the State, by the petitioner. Now this finding cannot be

arrived at merely on the basis of failure or refusal of the dealer to produce the relevant material called upon. There must at least be some material with the department, which is presumptive of, or from which an inference - may be even a far-fetched inference - can be drawn that the purchase was made within the State. In the absence of any such material, it would not be reasonable on the part of the assessing authority to hold that the taxable event has occurred, merely on account of the failure of the assessee to produce the relevant material.

10. The learned Government Pleader then contended that the facts which are within the special knowledge of the assessee must be disclosed by him and where he does not disclose such material, the burden lying upon the department to prove the taxable event is dispensed with. About the rule, there cannot be quarrel. But in the present case, where the very question is whether the purchase has taken place within the State, and where there is a total absence of any material suggesting that the purchase took place within the State, the authorities could not have come to the requisite conclusion, merely with reference to the aforesaid rule relating to burden of proof.

11. Another fact worthy of note in this case is that the Tribunal has not based its finding upon the alleged failure of the petitioner nor on the adverse presumption. On the contrary the Tribunal has sought to base its finding upon the correspondence available with it, which, as we have already stated, does in no manner suggest or support such a finding. In such a case, the department cannot seek to sustain the finding of the Tribunal on a basis not stated by the Tribunal itself.

12. We are, therefore, of the opinion that the finding of the Tribunal that the petitioner was the last purchaser of the manganese ore within the State of Andhra Pradesh is based on no evidence and that the failure or refusal of the petitioner to produce the documents or material relevant to the purchase of the ore from the Tumsar party, cannot be treated as a complete substitute for such absence of material.

13. Accordingly the T.R.C. is allowed, but in circumstances no costs. Advocate's fee Rs. 300.