
(1988) 03 AP CK 0001

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 42 of 1984

Ravi Enterprises

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 29-03-1988

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 6(2)
Central Sales Tax Act, 1956 — Section 10, 10, 8(3)

Citation : (1988) 70 STC 286

Hon'ble Judges : Y.V. Anjaneyulu, J;G. Ramanujulu Naidu, J

Bench : Division Bench

Advocate : S. Dasaratharama Reddi, for the Appellant; A. Venkataramana, Government Pleader for C.T., for the Respondent

Judgement

Y.V. Anjaneyulu, J.—The appellant, a partnership firm is a registered dealer under the Central Sales Tax Act (for short, "the Act"). This tax revision case filed by the appellant-assessee is directed against the order of the Sales Tax Appellate Tribunal (for short, "the Tribunal") affirming the penalty of Rs. 29,605 u/s 10-A of the Act. It is necessary to examine the facts leading to the levy of penalty in question. The assessee is a registered dealer under the Act. The assessee entered into a contract with the Andhra Pradesh State Irrigation Development Corporation Limited, hereinafter referred to as "the Corporation" to supply and erect pump sets with necessary accessories at the places specified by the Corporation. A purchase order was issued by the Corporation on 8th May, 1978 which incorporated the details of the equipment required for erecting the pump sets and the time-limit within which the erection should be completed. The purchase order also contains the other terms and conditions governing the contract between the parties.

2. For the purpose of executing the contract the assessee purchased goods from outside the State and issued C forms to enable the sellers to pay the Central sales tax at the rate of 4 percent on those goods. After taking delivery of the

goods from the sellers they were put in transit and the assessee sold the very same goods to the corporation and raised sale bills in the name of the Executive Engineer of the Corporation, Khammam. The Corporation issued to the assessee C forms. The value of the goods purchased from dealers outside the State and sold in transit to the Corporation amounted to Rs. 5,05,877.

3. In the return filed for the purpose of the Andhra Pradesh General Sales Tax Act, the assessee claimed deduction of the sum of Rs. 5,05,877 from out of the total sales on the ground that these sales represent second inter-State sales during the course of transit covered by section 6(2) of the Act and were therefore not liable to be taxed u/s 6(2) of the Act. The assessing authority (Commercial Tax Officer No. II, Kakinada) by his order dated 22nd April, 1980 allowed deduction of the aforementioned sum from out of the total sales, obviously accepting the assessee's plea that they represent second inter-State transit sales covered by section 6(2) of the Act. The net turnover after deducting the above inter-State sales was determined at Rs. 2,59,902 and the whole of the net turnover was again exempted on the ground that they are all second sales of electric cables, sluice valves, etc.

4. For the purpose of Central sales tax, the assessee claimed exemption of the inter-State sales to the above extent of Rs. 5,05,877. The assessing authority scrutinised the claim for exemption and found that in point of fact the goods were purchased by the assessee not for purposes of resale, as claimed, but for purposes of using them in a works contract. The assessing authority went through the purchase order which contained the terms and conditions governing the contract and came to the conclusion that the terms unmistakably indicated that the purchase order is one for execution of a works contract. The assessing authority was of the opinion that by issuing C forms to the persons from whom the assessee purchased the goods certifying that the goods in question were purchased for purposes of resale, the assessee enabled the sellers to evade payment of Central sales tax. It may be pointed out that had it not been for the C forms issued by the assessee the sellers of the goods would have paid Central sales tax of 10 per cent whereas on account of C forms issued by the assessee the sellers paid central sales tax of the only 4 per cent. On these facts the assessing authority came to the conclusion that the assessee contravened the provisions of section 8(3)(b) of the Central Sales Tax Act - an offence liable for prosecution u/s 10 of the Act and penalty could be levied u/s 10-A in lieu of prosecution. The assessing authority invoked his powers to levy the penalty u/s 10-A of the Act read with section 10(b) and levied penalty of Rs. 49,341.

5. The assessee filed an appeal before the Commercial Tax Officer against the order of the Assistant Commercial Tax Officer levying penalty. The Commercial Tax Officer affirmed the levy of penalty but reduced the penalty to Rs. 29,605. The assessee further appealed to the Tribunal against the penalty sustained by the Commercial Tax Officer. It was urged by the assessee before the Tribunal that he did not contravene the provisions of section 8(3)(b) of the Act and in issuing

the C forms to the persons from whom he purchased the goods he acted absolutely bona fide as the goods were purchased by him for resale only. The assessee further urged that the contract between himself and the Corporation was not an indivisible works contract but is severable and should therefore be considered as a contract for the supply of goods as well as for execution of works. The Tribunal declined to accept the assessee's plea and confirmed the penalty levied. This revision case is filed assailing the aforesaid order of the Tribunal.

6. We have heard the learned counsel for the assessee, Sri S. Dasaratharama Reddi and also the learned Government Pleader. We have also gone through the purchase order and other material papers furnished.

7. We find that in connection with the assessment under the Andhra Pradesh General Sales Tax Act, the assessee claimed deduction on the ground that the transact sales represent inter-State second sales covered by section 6(2) of the Act. It was not the assessee's case that the sum of Rs. 5,05,877 was exempt as relating to a works contract. There are no grounds to think that the officer who completed the assessment under the Andhra Pradesh General Sales Tax Act on 22nd April, 1980 did not scrutinise the particulars when he accepted the assessee's contention that they are only second inter-State sales. We were told that the same officer exercising powers under the Central Sales Tax Act completed the assessment under the Central Sales Tax within a few days thereafter and passed an order on 7th May, 1980 holding that the sum of Rs. 5,05,877 is exempt from levy of tax as it related to a works contract. The assessing authority held that the issuance of C forms by the assessee was for the ulterior purpose enabling the sellers from whom the goods were purchased to evade payment of appropriate Central sales tax. We find that the order dated 22nd April, 1980 under the Andhra Pradesh General Sales Tax Act conflicts with the order dated 7th May, 1980 under the Central Sales Tax Act. It is nobody's case that the assessee claimed exemption under the Central Sales Tax Act that the amount in question represented the value of a works contract. If the assessee's claim that the sum represented inter-State second sales was acceptable for purposes of the assessment under the Andhra Pradesh General Sales Tax Act, there appears to be no reason why a different view should be taken for the Central Sales Act.

8. Presuming that the assessing authority under the Central Sales Tax Act has the power to go into the question, we are still left with an important consideration, viz., whether on the facts and circumstances, it could be said that the assessee issued the C forms to the persons from whom he purchased the goods with the knowledge that he was not going to resell the same, to the Corporation. The purchase order containing the terms and conditions is a complex document containing a variety of covenants and one has to apply legal principles to determine whether the contract between the assessee and the Corporation was an indivisible works contract or a severable contract for the

supply of goods and execution of works. It is not possible to subscribe to the view that such a complex examination should have been made by the assessee and he should have understood upon consideration of the covenants that the purchase order is an indivisible works contract. There is nothing to show any awareness on the part of the assessee that when he was purchasing the goods from the dealers outside the State he was purchasing them for a purpose other than resale to the Corporation. It might be that the assessee was under an erroneous impression that under the contract entered into by him with the Corporation he was under an obligation to sell the goods as well as to execute the works. In the facts and circumstances, we think the assessee is entitled to the benefit of doubt. It is not possible to say that the Revenue has been able to establish that the assessee acted with any mala fide intention in issuing the C forms and there was a contravention of section 8(3)(b) of the Act. In these circumstances we think the levy of penalty is uncalled for. We accordingly set aside the order of the Tribunal sought to be revised and also the order of the Assistant Commercial Tax Officer levying penalty u/s 10-A of the Act. The tax revision case is allowed. There shall be no order as to costs. Government Pleader's fee Rs. 200.

9. Petition allowed.