(1990) 03 AP CK 0013

In the Andhra Pradesh High Court

Case No : T.R.C. No''s. 219, 220, 221 and 222 of 1989

Rayalaseema Enterprises APPELLANT

Vs

State of Andhra Pradesh RESPONDENT

Date of Decision : 28-03-1990

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 14(4), 6C

Citation : (1990) 78 STC 121

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

Bench : Division Bench

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

Judgement

B.P. Jeevan Reddy, J.—These four tax revision cases pertain to the assessment years 1976-77, 1977-78, 1978-79 and 1980-81, i.e., all prior to the introduction of section 6-C in the Andhra Pradesh General Sales Tax Act, 1957. In T.R.C. Nos. 219 and 222 of 1989 relating to the assessment years 1976-77 and 1980-81, certain turnovers relating to bottles used for liquor and packing material were exempted as second sales and the first sales thereof were subjected to tax at the rate applicable to bottles and packing material. The original assessments made by the Deputy Commercial Tax Officer were revised by the assessing authority in one case and in another case by the higher authority, viz., the Deputy Commissioner of Commercial Tax.

2. In T.R.C. No. 220 of 1989 relating to the assessment year 1977-78, the turnover of bottles and packing material was assessed at a higher rate of tax by the assessing authority in exercise of his power u/s 14(4). In T.R.C. No. 221 of 1989 relating to the assessment year 1978-79, the Deputy Commissioner, in exercise of his revisional power set aside the order of the appellate authority and directed levy of higher rate of tax on bottles and packing material. In the appeal pertaining to the assessment year 1977-78, it was contended before the Tribunal that a part of the turnover, viz., a turnover of Rs. 8,279 (which has been

assessed at higher rate) represented second sales. Thus, except in T.R.C. No. 221 of 1989, the dispute is with regard to turnover as well as rate of tax pertaining to bottles sold along with liquor and packing material used for packing the liquor bottles. In T.R.C. No. 221 of 1989, the dispute is with regard to rate of tax.

3. Petitioner filed appeals to the Sales Tax Appellate Tribunal against the order of the Deputy Commissioner, which were dismissed following the decision of this Court in Raj Sheel''s case [1987] 64 STC 398.

4. The Supreme Court however has since partly allowed the appeals [See Raj Sheel v. State of Andhra Pradesh [1989] 74 STC 379.] preferred against the aforesaid decision. The Supreme Court is of the view that the question whether there was a separate agreement for the sale of bottles is a question of fact, which has to be investigated by the appropriate authority under the Act. Accordingly the matters are remitted back for verification of the said factual aspect. In similar matters we thought it appropriate that they should go back to the Tribunal since that is the proper authority to verify the facts and also because the said verification cannot conveniently be done by this Court in a tax revision case. We may also say that the Tribunal merely followed the said decision of this Court and did not advert to the factual aspects.

5. The Tribunal has to consider whether there was a separate agreement - express or implied for the sale of bottles and the packing material used while selling the liquor. If it is found that there was no separate agreement for the sale of bottles/packing material, the turnover relating to bottles/packing material will also be charged at the rate applicable to the contents. In such a case the turnover would be "one", i.e., one relating to liquor. If, however, it is found that there is a separate agreement for the sale of bottles/packing material, the orders passed by the lower authorities will be valid.

6. In the circumstances, the orders of the Tribunal are set aside and the matters are remitted to the Tribunal for fresh disposal of the appeals to the extent indicated above. The tax revision cases are accordingly allowed. No costs. Advocate''s fee Rs. 150 in each.

7. Petitions accordingly allowed.

8. Cases remanded.

