
(1972) 09 AP CK 0011

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 4 of 1972

Reddy and Company

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 06-09-1972

Acts Referred:

Central Sales Tax (Amendment) Act, 1969 — Section 10, 10(1)

Citation : (1973) 32 STC 399

Hon'ble Judges : Sriramulu, J;Kondaiah, J

Bench : Division Bench

Advocate : S. Dasaratharama Reddy, for the Appellant; Mahadev, for Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Kondaiah, J.—This tax revision case by the petitioner-assessee u/s 22(1) of the Andhra Pradesh General Sales Tax Act, 1957, gives rise to the following question of law : "Whether, on the facts and in the circumstances of the case, the petitioner-assessee is or is not entitled to the benefits of Section 10 of the Central Sales Tax (Amendment) Act (28 of 1969) (hereinafter referred to as "the Act") ?"

2. In order to appreciate the scope of the question, it is necessary to briefly refer to the admitted facts and circumstances that led to the filing of this revision by the assessee. For the year 1965-66 ending with 31st March, 1966, the assessee, a dealer in butter and ghee, whose turnover was taxable at the point of last purchase under the provisions of the Andhra Pradesh General Sales Tax Act, filed returns every month under Rule 14(a) of the Central Sales Tax (Andhra Pradesh) Rules, 1957, in respect of the turnover of inter-State sales. The total turnover of inter-State sales of butter and ghee for that year was Rs. 2,15,902.34. In the sale bills, the assessee certified that "the turnover mentioned in item "S" of this bill is liable to tax at our end and will be included in the return of turnover due to be submitted by us to the commercial tax authorities". The assessee, at the time

of filing the monthly returns, remitted the sales tax to the State Government along with C forms. In the course of the assessment proceedings, the assessee claimed the exemption of the turnover of its inter-State sales in respect of butter and ghee on the ground that it had not collected tax from its buyers. The Commercial Tax Officer, relying upon the conduct of the assessee in returning the turnover and paying the tax thereon and in issuing certificates to the effect that the turnover of the goods in the bills are liable to tax at their end and will be included in the return of turnover due to be submitted by them to the commercial tax authorities, rejected the claim of the assessee holding that the non-collection of tax from the buyers was not on the ground that no tax could have been levied and collected. The appeal preferred by the assessee against the order of the Commercial Tax Officer was without success. On further appeal, the Sales Tax Appellate Tribunal, on a consideration of the facts and circumstances, found that the assessee had, in fact, not collected the Central sales tax from its buyers but, however, agreeing with the sales tax authorities, it dismissed the appeal holding that the conditions specified in Section 10 of the Act were not satisfied. Hence this tax revision case by the assessee.

3. The contention of Sri S. Dasaratharama Reddy, counsel for the assessee, that his client is entitled to the benefits of Section 10(1) of the Act as no tax had, in fact, been collected from the purchasers, was resisted by Sri Mahadev, counsel appearing for and on behalf of the State on the following grounds:

(i) The conduct of the assessee in issuing certificates that it is liable to pay Central sales tax in respect of the transactions in question, in returning the turnover and paying the tax would establish that the assessee was of the view that Central sales tax was payable on those transactions.

(ii) The circumstances of the case would show that it had collected the Central sales tax from the buyers and had not shown the same in the bills.

4. The answer to the question mainly turns upon the provisions of Section 10 of the Central Sales Tax (Amendment) Ordinance, 1969, which has been replaced by the Central Sales Tax (Amendment) Act, 1969 (which came into force on 30th August, 1969), which reads as follows :

10. Exemption from liability to pay tax in certain cases.-(1) Where any sale of goods in the course of inter-State trade or commerce had been effected during the period between the 10th day of November, 1964 and the commencement of this Ordinance and the dealer effecting such sale has not collected any tax under the principal Act on the ground that no such tax could have been levied or collected in respect of such sale or any portion of the turnover relating to such sale and no such tax could have been levied or collected if the amendments made in the principal Act by this Ordinance had not been made, then, notwithstanding anything contained in Section 9 or the said amendments, the dealer shall not be liable to pay any tax under the principal Act, as amended by this Ordinance, in respect of such sale or such part of the turnover relating to

such sale.

(2) For the purposes of Sub-section (1), the burden of proving that no tax was collected under the principal Act in respect of any sale referred to in Sub-section (1) or in respect of any portion of the turnover relating to such sale shall be on the dealer effecting such sale.

5. Before examining the scope and application of Section 10 of the amending Act, it is profitable to indicate the scheme and object of the amending Act. Prior to the decision of the Supreme Court in *State of Mysore Vs. Yaddalam Lakshminarasimhaiah Setty and Sons*, there was a conflict of opinion amongst several High Courts about the liability of inter-State sales to be taxed under the Central Sales Tax Act. Such controversy was put an end to by the Supreme Court in *State of Mysore Vs. Yaddalam Lakshminarasimhaiah Setty and Sons*, wherein the transactions in respect of powerloom and handloom textiles not liable to be taxed under the Mysore sales tax law were held to be also not liable to be assessed under the Central Sales Tax Act. The expression "levied" in Section 9(1) of the Central Act and in Section 5(3)(a) of the State Act was given one and the same interpretation on the ground that no departure in the manner of levy of tax on the specified goods liable to be taxed at single point under the State Act was made in the Central Act.

6. Having come to know that a large number of dealers have collected Central sales tax from their purchasers illegally or erroneously and many of such dealers have paid tax pursuant to the assessments made on them, although they are not liable to pay the Central sales tax in view of the decision of the Supreme Court in *State of Mysore Vs. Yaddalam Lakshminarasimhaiah Setty and Sons*, the Central Sales Tax (Amendment) Ordinance, 1969, was promulgated on 9th June, 1969, with a view to validate the assessments and reassessments and the collection of tax so far made by the dealers and to collect the tax from the dealers who have already collected the tax from their purchasers. That is how Section 6 of the amending Act amended Section 9 of the principal Act which makes any dealer liable to pay tax on sales of goods effected by him in the course of inter-State trade or commerce and the tax so levied shall be collected by the respective State Government as if the tax payable by such dealer is a tax payable under the general sales tax law of the State. The object of the substituted Section 9 of the amending Act being to validate the assessments and collection of tax in respect of such dealers who have actually collected the tax from their purchasers, sufficient safeguard and protection had to be made in respect of such dealers who have not, in fact, collected any Central sales tax from their purchasers. The result is Section 10 of the Central Sales Tax (Amendment) Ordinance, 1969. The object of Sub-section (1) of Section 10 is that no tax should be collected in respect of sale transactions that took place between the day on which the Supreme Court pronounced its judgment in *State of Mysore Vs. Yaddalam Lakshminarasimhaiah Setty and Sons*, and the day on which the Central Sales Tax (Amendment) Ordinance, 1969, was passed (i. e., 10th November, 1964 and

9th June, 1969, respectively) notwithstanding the provisions of Section 9 in case the dealer has not collected the tax from his purchasers. The reason behind this move appears to be to see that the dealers who have collected tax from buyers are not allowed to keep it for themselves. In the circumstances, it is the State that should get such benefit but not the dealers.

7. Section 10 of the Act provides for an exemption from liability to pay tax in certain cases. It is, no doubt, the assessee that should bring his case within the provisions of Section 10(1) of the Act in order to take benefit of the exemption provided therein. That apart, Sub-section (2) to Section 10 of the Act makes it abundantly clear that the onus to prove that no tax was collected under the principal Act in respect of any sale referred to in Section 10(1), shall be on the dealer effecting such sale. In order to avail the exemption provided u/s 10(1) of the Act, the dealer has to establish the following ingredients: (i) the transaction of any sale of goods must be in the course of inter-State trade or commerce; (ii) the transactions or sales should have been effected during the period between 10th November, 1964 and 9th June, 1969; (iii) the dealer effecting such sale or transaction has not collected any tax under the principal Act; (iv) the ground for non-collection of the tax under the principal Act must be that no tax could have been levied or collected in respect of such sale or any portion of the turnover relating to such sale; and (v) no such tax could have been levied or collected if the amendments made in the principal Act by the Ordinance had not been made. The dealer in such a case shall not be liable to pay any tax under the principal Act, notwithstanding anything contained in Section 9 or the amendments in respect of such sale or such part of the turnover relating to such sale. The burden being on the assessee to bring his case within the four corners of Section 10(1), the assessee shall fail if the ingredients specified therein have not been established.

8. In the light of the foregoing discussion, we shall now examine the facts of the present case. The Sales Tax Appellate Tribunal, which is the final fact finding authority has categorically found that the petitioner herein had not collected the Central sales tax in respect of the turnover pertaining to inter-State sales now in dispute from its customers. The transactions in question are admittedly inter-State sales. They also pertain to the period specified in Section 10(1). The only point in dispute between the contesting parties in this revision is the ground on which the Central sales tax has not been collected. The sales tax authorities were of the view that the Central sales tax was collected by the petitioner as it undertook to pay the same along with its returns. Mr. Mahadev pressed upon us that the dealer in the instant case has, in fact, collected sales tax from its customers, though the same was not charged separately. In other words, it is submitted that the dealer has charged sales tax and included the same in the sale price though the bills do not indicate the charges of sales tax separately. The learned counsel, in support of this plea, relied upon the certificates issued by the dealer in the bills and the inclusion of this turnover in the returns and the undertaking of the dealer to pay the sales tax and the payment of the same to

the State. The certificates issued by the dealer must be construed, in the circumstances of the case, as being referable to the local sales to which the Central sales tax is not applicable. Rule 45(3)(b) of the Andhra Pradesh General Sales Tax Rules requires a certificate to be issued by a selling dealer in respect of single point sales tax goods under the local Act to the effect that tax was paid. The issuance of the certificates in the sale bills by the assessee in the instant case cannot be relied upon in support of its stand taken by the State that the assessee has not collected the tax on the ground that such tax was not liable to be paid. That apart, the conduct of the assessee cannot be a basis to make him liable to pay sales tax on the transactions which are not assessable to tax as per the provisions of the statute. Mere admission or conduct of a dealer cannot be a valid ground for the levy of sales tax. The basis for the levy of sales tax or any tax under a fiscal statute must be in accordance with the provisions of the charging section or sections. Where a sale transaction is not assessable to tax under the charging provisions of the statute, the State is not entitled either to levy or collect tax on such sales. The right to levy and collect tax must be justified under a valid enactment. The State cannot take advantage of the conduct or wrong impression of a citizen in levying or collecting tax under a fiscal enactment. A citizen, who on an erroneous impression that he was liable to pay certain amount and pays the same, is certainly entitled to have a refund of such amounts as the State is not entitled to retain such amounts. Hence, we are not impressed with the submission of the counsel appearing for the sales tax department. We shall now turn to the submission of the State that the dealer must have collected the Central sales tax from its customers, otherwise the dealer would not have undertaken to pay the same to the State and returned such turnover and paid the amount. This contention must be rejected for reasons more than one. There is no such specific plea raised by the assessing authority or the appellate authorities, nor a specific finding to that effect has been given by the Sales Tax Appellate Tribunal. We may add that the Tribunal specifically found that no Central sales tax has been collected by the dealer from its customers. In view of such a specific finding, we cannot accept the submission of Mr. Mahadev that the sales tax had, in fact, been collected by the dealer, but it has not shown the same in the bills. That apart, the department did not raise such a plea at any time before. In that view we cannot permit the State to raise this plea at this stage.

9. In the circumstances, we have no hesitation to agree with the Sales Tax Appellate Tribunal that no Central sales tax had been collected by the assessee in respect of the turnover of the inter-State sales. As pointed out earlier, the only point that remains for determination is the ground on which the Central sales tax has not been collected. Liability to tax such inter-State sales was being questioned by the dealers. In fact, there was divergence of opinion among the High Courts on this point. The dealer must be under the bona fide impression that no such tax could be levied or collected in respect of such sale. The assessment year is 1965-66. Admittedly, after 10th November, 1964, when the

Supreme Court pronounced its judgment in *State of Mysore Vs. Yaddalam Lakshminarasimhaiah Setty and Sons*, the assessee could not have collected any amount by way of Central sales tax from its customers on inter-State sales. The entire period in question is after 10th November, 1964. Hence, no Central sales tax could be levied or collected by the petitioner from its purchasers in respect of its turnover of Rs. 2,15,902.34 which is now in dispute. In the circumstances, we have no hesitation to hold that the petitioner had not collected Central sales tax in respect of the turnover now in question on the ground that no such tax could have been levied or collected and all the ingredients of Section 10(1) of the Act have been satisfied entitling the dealer to have the benefit of exemption of tax provided therein. This view of ours gains support from a decision of the Mysore High Court in *Rallis India Ltd. v Commercial Tax Officer, Bellary* [1970] 26 S.T.C. 36, wherein a dealer in cotton collected sales tax on sales of cotton in inter-State transactions effected during 10th November, 1964 and 1st March, 1968. Subsequently, the amounts of sales tax illegally collected has been refunded to its customers. The sales tax authorities sought to collect Central sales tax by virtue of the substituted provisions of Section 9 of the Act and the question whether the dealer therein was or was not entitled to the exemption u/s 10(1) of the Act fell for decision before a Division Bench of the Mysore High Court. The claim of the dealer for exemption u/s 10(1) of the Act was upheld. The contention advanced on behalf of the sales tax authorities that the tax had been collected and the refund of the amount subsequently by the dealer to its customers would not in any way entitle the dealer to have the benefit of Section 10(1) of the Act was negated. The learned Govinda Bhat, J., who spoke for the court, observed at page 38 as follows :

If the customers had filed suits against the petitioner before the Ordinance, the petitioner could not have resisted the suits. Where the amounts were illegally collected but were refunded before the Ordinance, the position, to our mind, is not in any way different from the one where the dealer does not initially collect any amount by way of tax.

10. In *Narayanan Nair & Co. v. Union of India* [1971] 28 S.T.C. 312, the petitioner a dealer in rubber and hill produces collected Central sales tax on inter-State sales effected during the year 1967-68 from its customers though such sales were not liable to tax. On the demand raised by the customers, the petitioner-dealer had returned the tax collected by it from them. Subsequently, the sales tax authorities raised a demand against the dealer subsequent to the promulgation of the Central Sales Tax (Amendment) Ordinance, 1969. Relying upon the decision of the Madras High Court in *Kathan Nadar Company v. The State of Madras* [1963] 14 S.T.C. 694, that the refund of the amounts of tax collected by a dealer from its customers has to be construed as amounting to no initial collection of sales tax, the learned M. U. Isaac, J., upheld the claim of the dealer u/s 10(1) of the Act as the tax collected by the dealer was refunded to its customers before the promulgation of the Central Sales Tax (Amendment) Ordinance, 1969. The learned Judge proceeded to observe thus :

If an amount is wrongly received, either it be under a mistake of law or under a mistake of fact, it is the duty of the receiver and it also creates a legal liability on him to return the said amount. The fact that he discharged that duty or liability cannot place him under a disadvantage. What he does is only to rectify an error which occurred; and the error does not exist after it is rectified. It also appears to me that the legislative intent of Section 10 of the Amendment Act was to exempt all dealers who had not with them any amount collected by them as sales tax between the two dates mentioned therein, namely, date on which the Supreme Court decision was pronounced and the date on which the Ordinance was promulgated.... I cannot find any rational basis for differentiating a person who did not make a wrong collection from one who made a wrong collection and returned the same to rectify the mistake, in the matter of the exemption granted u/s 10 of the Act. Such a differentiation would be unconstitutional.

11. We shall now turn to *The Tata Iron and Steel Co., Ltd. Vs. The State of Bihar*, *Love v. Norman Wright (Builders) Ltd.* [1944] 1 K.B. 484 and *Spencer and Co. Ltd. v. The State of Mysore* [1970] 26 S.T.C. 283 relied upon by the counsel appearing on behalf of the State. In *Tata Iron and The Tata Iron and Steel Co., Ltd. Vs. The State of Bihar*, the contention raised by the Attorney-General that sales tax is an indirect tax on the consumer did not find favour with the majority view expressed by the Supreme Court. The liability to pay sales tax is on the seller. The seller or registered dealer is entitled to collect tax from its customers on the sales effected by him. But he may or may not charge sales tax. None prevents him from not collecting the sales tax if he so pleases or chooses not to collect tax from the customers for some reason or other. He may find it profitable to sell his goods at a competitive price and to retain his customers, even at the sacrifice of sales tax. But his liability to pay sales tax to the State will not in any way be affected. This case does not render any assistance to the plea advanced on behalf of the State, as the assessee in the present case was found to have not collected the sales tax at all. There is no finding that the assessee has, in fact, collected the sales tax, but has devised this method to claim exemption u/s 10(1) of the Act.

12. The decision of the King's Bench in *Love v. Norman Wright (Builders) Ltd.* [1944] 1 K.B. 484 is an authority for the proposition that the buyer is not liable to pay sales tax in addition to the agreed sale price unless specifically provided otherwise in the very contract. That decision also is not relevant for the point at issue.

13. There remains the decision of the Mysore High Court in *Spencer and Co. Ltd. v. State of Mysore* [1970] 26 S.T.C. 283. Therein a Division Bench had to consider the scope and meaning of the expression "amounts collected by way of tax" used in Rule 6(4)(h) of the Mysore Sales Tax Rules, 1957. That expression was held to take in all amounts collected in the character of, or as being, tax under the Act. That decision is also not relevant to decide the controversy in the case on hand.

14. For all the reasons stated, we have no hesitation to hold that the assessee-petitioner is entitled to the benefits of Section 10(1) of the Act as all the ingredients therein have been satisfied.

15. In the result, the revision case is allowed setting aside the orders of the Sales Tax Appellate Tribunal and the sales tax authorities. The petitioner be entitled to his costs. Advocate's fee Rs. 100.