(1998) 01 AP CK 0038

In the Andhra Pradesh High Court

Case No : Writ Petition No. 25432 of 1996 and Batch

Sable Weghire and Company Ltd., Pune — APPELLANT

Vs

A.P. Forest Development Corporation Ltd., Hyderabad and Another — RESPONDENT

Date of Decision : 23-01-1998

Acts Referred:
Andhra Pradesh General Sales Tax Act, 1957 — Section 5

Citation : (1998) 4 ALD 141 : (1998) 4 ALT 433

Hon'ble Judges : P. Venkatarama Reddi, Acting C.J.;A.S. Bhate, J

Bench : Division Bench

Advocate : Mr. P. Srinivasa Reddy, Mr. Abdul Najeeb Khan, Mr. P. Girish Kumar and Mr. S. Dwarakanath, for the Appellant; Smt. A. Chaya Devi, SC for APSCDC Ltd. and Government Pleader for Commercial Taxes, for the Respondent

Judgement

P. Venkatarama Reddi, ACJ

1. The petitioners are engaged in the business of manufacture of beedies and are registered dealers under the Andhra Pradesh General Sales Tax Act and Central Sales Tax Act. They entered into agreement with the Andhra Pradesh Forest Development Corporation Limited (hereinafter referred to as Corporation) for the purchase of abnus leaves plucked and collected from the forest areas in Andhra Pradesh during 1997 season. Beedi-leaves are taxable at the point of sale by Corporation at 9%. The petitioners have undertaken to pay the tax as per the provisions of the A.P.G.S.T. Act. Accordingly, the Corporation has been demanding the payment of sales tax by the petitioners at 9% by way of reimbursement of the tax payable by the Corporation to the Department. The Corporation relied upon the circular issued by the Commissioner of Commercial Taxes in reference No. A1(3)/ 2312/96, dated 18-10-1996. The impugned portion of the circular issued by the Commissioner is as follows :

"Regarding point No.5, I am to inform that ''G'' Form cannot be accepted for sale of beedi leaves as widespread misuse is suspected."

2. The legality and validity of this circular is assailed in these writ petitions. The petitioners seek a consequential direction to direct the 1st respondent to charge sales tax at 4% only in respect of sales of beedi leaves on collecting Form G u/s 5-B of the A.P.G.S.T.Act.

3. Section 5-B provides for levy of concessional rate of tax at 4%, if a dealer sells the goods to another dealer for the use by latter as raw-material, component parts etc. in the manufacture or processing of goods inside the State, provided that the dealer selling the goods furnishes to the assessing authority in the prescribed manner a declaration issued by the buying dealer in the prescribed form. That form is known as ''G'' Form.

4. The contention of the petitioners is that the abnus leaves are meant to be used as raw-material for the manufacture of beedies and therefore the tax is leviable at 4% if the G. Form declarations are furnished by the petitioners to the Corporation. As the Corporation is liable to pay the tax at the concessional rate of 4% on collecting the G-Forms, the petitioners submit that the Corporation is not legally entitled to collect from the petitioners more than 4% on the sale turnover of beedi-leaves. It is further contended that the circular issued by the Commissioner of Commercial Taxes goes contrary to the statutory provision contained in Section 5-B and the clarification of the Commissioner is based on a presumption that there is scope for misuse of the concession by the buying dealers. Such misuse will obviously arise in case the buying dealers (petitioners) do not utilise the abnus leaves purchased from the Corporation in the manufacture of beedies.

5. While the possibility of said misuse cannot be ruled out, there cannot be blanket ban on the acceptance of G-Forms from the petitioners which facilitate the Corporation and the petitioners in their turn to avail of concessional Tate of tax. An omnibus mandate not to accept G-Forms cannot be countenanced in the light of the specific provision embodied in Section 5-B of the A.P.G.S.T.Act. The clarificatory letter of the Commissioner insofar as it denies that benefit to the sellers and purchasers of beedi-leaves flies in the face of the statutory provision and the Commissioner has no jurisdiction to issue such omnibus instructions. The law is not powerless to check the dealers indulging in fraudulent practices and there are enough provisions in the A.P.G.S.T. Act and Rules to proceed against the dealers who give false G-Forrn declarations with a view to avail of the concessional rate of tax. Viewed in this light the impugned portion of the circular dated 18-10-1996 issued by the Commissioner of Commercial Taxes is liable to be struck down as illegal and ultra vires his powers. " Accordingly, we allow the writ petitions and direct the Corporation to accept the G-Forms furnished by the petitioners if they are otherwise in order.

6. While giving this direction, we are inclined at the same time to issue further direction so that the interests of one of the contracting parties will not ultimately suffer if for any reason the declarations issued by the petitioners are found to be false wholly or partially. If the petitioners do not manufacture beedies or utilise

the beedi-leaves for a purpose other than the manufacture, mere is every possibility of the Corporation being saddled with higher rate of tax of 9%. To meet such a situation, we direct that the bank guarantees which have so far been furnished by the petitioners pursuant to the interim directions for the differential tax shall be kept alive for a period of one year from today. So also, in respect of the future purchases, similar bank guarantees valid for one year should be furnished by the petitioners. If the declarations in form-G are rejected by the Sales Tax Department either in the course of assessment of the Corporation or the petitioners, the bank guarantees can be encashed by the Corporation subject to the remedies open to the petitioners under law. The Commercial Tax authority concerned should furnish necessary information to the Corporation in regard to acceptance or otherwise, of ''G'' Forms. In case the petitioners have failed to furnish bank guarantees for the differential tax, the petitioners are liable to pay the tax at 9% as per the demand made by the Corporation.

7. Subject to the above directions, the writ petitions are allowed. No costs.

