(1991) 12 AP CK 0025

In the Andhra Pradesh High Court

Case No : T.R.C. No''s. 50, 51, 52 and 53 of 1984

Sakthi Engineering Co. APPELLANT

Vs

State of Andhra Pradesh RESPONDENT

Date of Decision : 23-12-1991

Acts Referred:

Citation : (1993) 91 STC 59

Hon'ble Judges : V. Sivaraman Nair, J;S. Parvatha Rao, J

Bench : Division Bench

Advocate : S. Venkateswara Rao, for the Appellant; M. Ramaiah, Government Pleader for Commercial Taxes, for the Respondent

Judgement

S. Parvatha Rao, J.—The main question in these tax revision cases is whether sales tax can be levied on the excise duty included in the earlier part of the bill, but which was deducted at the end of the bill showing the balance as the amount payable by the customer. The learned counsel for the petitioner contends that the excise duty was excluded from the final billed amount as it was not payable by a customer and therefore did not form part of the turnover assessable to sales tax. Counsel for the petitioner states that under the terms of the sale, the customer did not agree to pay the excise duty because it was to be reimbursed by the Central Government. He relies on the decision of a Division Bench of this Court in State of Andhra Pradesh Vs. Ranka Cables Pvt. Ltd., wherein also similar transactions were involved and it was held that excise duty did not form part of taxable turnover as it was not payable by the customer.

2. The facts of these cases are similar to the facts in Ranka Cables cases [1990] 78 STC 111. From the case record of that case, we find that the actual term in one of the contracts entered into by the assessee in that case was "no excise duty will be payable by the Board since all payments to the excise department to be reimbursed by supplementary cash assistance". Learned counsel for the petitioner produced a typical contract entered into by the assessee in these cases wherein the term relating to price was similar and provided as follows :

"The unit ex-factory price freight to destination railway station/stores and transit insurance and f.o.r. destination railway station/stores are indicated below. Sales tax, if any, and applicable will be paid extra at actuals. As the excise duty is reimbursable by Government of India, it shall not be paid by the Board and the contractor should claim the same directly from the Government."

3. Therefore, in these cases also it has to be held that excise duty did not form part of the taxable turnover as it was not payable by the customer Board and that the Tribunal erred in including it in the taxable turnover. In the circumstances, following the earlier decision of this Court in the case of State of Andhra Pradesh Vs. Ranka Cables Pvt. Ltd., , we have to allow these tax revision cases.

4. Learned counsel for the petitioner states that the amount included towards sales tax on the excise component in the bill will be refunded to the customer, i.e., Andhra Pradesh State Electricity Board if the said amount was collected from the said Board.

5. The tax revision cases are therefore allowed. No costs.

6. Petition allowed.

