
(1974) 12 AP CK 0008

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 5791 and 5792 of 1972

Shafeeq Shameem and Co.

APPELLANT

Vs

Commercial Tax Officer

RESPONDENT

Date of Decision : 26-12-1974

Acts Referred:

Central Sales Tax Act, 1956 — Section 10, 12, 14, 15, 6
Constitution of India, 1950 — Article 14

Citation : (1977) 39 STC 535

Hon'ble Judges : Ramachandra Rao, J;Raghuvir, J

Bench : Division Bench

Advocate : W.V.V. Sundara Rao, for the Appellant; The Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ramachandra Rao, J.

1.The petitioner Shafeeq Shameem & Co., Vizianagaram, in both these writ petitions who are dealers in raw hides and skins, is a registered dealer under the Andhra Pradesh General Sales Tax Act (hereinafter called the State Act) and the Central Sales Tax Act (hereinafter called the Central Act). Raw hides and skins are "declared goods" u/s 14 of the Central Act. The petitioner purchases the said goods within the State of Andhra Pradesh and sells them in the State of Madras (now Tamil Nadu). u/s 15(b) of the Central Act, when declared goods are sold in the course of inter-State trade or commerce, the tax levied under the State law on the intra-State sales has to be refunded. With a view to avoid taxing the dealer on the intra-State sales and also on the inter-State sales and then refund the tax on the intra-State sales, the State Government made a notification in exercise of the power u/s 8(5) of the Central Act in G. Order Ms. No. 1094, Revenue, dated 14th July, 1964, exempting inter-State sales from taxation under the Central Act where tax was levied on purchases under the State Act on the dealer giving an undertaking not to claim refund of the said tax. Rule 27-A was

introduced in the State Rules made under the State Act prescribing certain conditions and time-limit for filing applications for refund u/s 15(b) of the Central Act.

2. For the assessment years 1964-65, 1965-66, 1966-67 and 1967-68, the petitioner was taxed on the turnover of purchases of the said goods made within the State under the State Act. The same goods were sold by the petitioner in the course of inter-State trade or commerce to dealers in the State of Madras. The petitioner had been filing undertakings in accordance with G. Order Ms. No. 1094 and suffering tax under the State Act in respect of such purchases within the State and claiming exemption from taxation under the Central Act on the inter-State sales of the said goods,

3. While so, the Supreme Court held in *State of Mysore v. Lakshmi-narasimhiah Setty & Sons* [1965] 16 S.T.C. 231 (S.C.), that any exemption given under the State law or "the point determined by it for levy of tax applied to assessments under the Central Act. This decision was rendered on 10th November, 1964. The petitioner and several other dealers then filed writ petitions in this court for the issue of writ of mandamus claiming refund u/s 15(b) of the Central Act on the ground that the only precondition imposed by Section 15(b) for claiming refund was that the said goods should have been sold in the course of inter-State trade or commerce, that no tax could be levied under the Central Act on inter-State sales as under the State law raw hides and skins were not taxable at the point of sale on intra-State sales by reason of the ruling in *State of Mysore Lakshmi narasimhiah Setty & Sons* [1965] 16 S.T.C. 231 (S.C.). It was also contended inter alia that the order, G. Order Ms. No. 1094 dated 14th July, 1964 and Rule 27-A of the State Rules could not fetter the statutory right to claim refund u/s 15(b) of the Central Act and that the said order and rule were ultra vires as they conflicted with and restricted the right conferred by Section 15(b). The said writ petitions were disposed of by this court's judgment on 3rd January, 1969, which has since been reported in *Rafeeq Ahmed & Co. v. State of Andhra Pradesh* [1969] 24 S.T.C. 430.

4. In the aforesaid decision Jaganmohan Reddy, C.J. (as he then was) and one of us, Ramachandra Rao, J., held as follows :

(1) By reason of the decision of the Supreme Court in *State of Mysore v. Lakshminarasimhiah Setty & Sons* [1965] 16 S.T.C. 231 (S.C.), raw hides and skins were taxable at the purchase point on intra-State sales and, therefore, no tax could be levied on inter-State sales of the said goods at the sale point under the Central Act and the petitioners inter-State sales were therefore not taxable.

(2) G. Order. Ms. No. 1094 applied only to cases where the transaction of the dealer attracted tax both under the State Act and the Central Act and the G. Order was not applicable to the petitioners whose inter-State sales did not attract tax under the Central Act and, therefore, it was unnecessary to decide the question whether the said G. ORDER was ultra vires.

(3) That there could be no taxation by agreement where there was no legal basis for imposing the tax and hence the undertaking filed by the petitioners not to claim refund did not estop them from claiming refund u/s 15(b) of the Act.

(4) That u/s 15(b) of the Central Act read with Section 6 of the State Act, right to refund arose the moment the goods purchased by a tanner or the last purchaser within the State were sold in the course of inter-State trade or commerce and no further conditions were imposed by Section 15(b) for claiming refund and

(5) That the respondents therein should entertain the applications filed by the dealers under Rule 27-A for refund of the tax levied under the State law and dispose of the same in accordance with law.

5. As a result of the statutory provisions then in force as interpreted by the Supreme Court in *State of Mysore v. Lakshminarasimhiah Setty & Sons* [1965] 16 S.T.C. 231 (S.C.) and this court in *Rafeeq Ahmed & Co. v. State of Andhra Pradesh* [1969] 24 S.T.C. 430, the tanner and the last purchaser of raw hides and skins within the State who sold the said goods in the course of inter-State trade or commerce was not liable to be taxed on his turnover of inter-State sales under the Central Act and yet he could claim refund of the tax levied under the State Act on the purchases within the State. Taking advantage of the said legal position, the petitioners filed applications for refund of the tax levied under the State Act. But meanwhile the Parliament stepped in and made certain amendments to the Central Act. First, it promulgated Ordinance No. 4 of 1969 on 9th June, 1969, which has since been replaced by the Central Sales Tax (Amendment) Act (28 of 1969). As the relevant provisions of the Ordinance and the Central Sales Tax (Amendment) Act, with which we are concerned are the same, we shall refer only to the provisions of the Central Sales Tax (Amendment) Act (28 of 1969). The relevant sections are Sections 3, 9 and 10, which read as follows :

3. Amendment of Section 6-In Section 6 of the principal Act,-

(a) after Sub-section (1), the following Sub-section shall be and shall be deemed always to have been, inserted, namely :-

"(1A) A dealer shall be liable to pay tax under this Act on a sale of any goods effected by him in the course of inter-State trade or commerce notwithstanding that no tax would have been leviable (whether on the seller or the purchaser) under the sales tax law of the appropriate State if that sale had taken place inside that State.;

(b) in Sub-section (2), for the word, brackets and figure "Sub-section (1)", the words, brackets, figures and letter "Sub-section (1) or Sub-section (1A)" shall be and shall be deemed to have been, substituted with effect from the 1st day of October, 1958.

9. Validation of assessments, etc.-(1) Notwithstanding anything contained in any

judgment, decree or order of any court or other authority to the contrary, any assessment, reassessment, levy or collection of any tax made or purporting to have been made, any action or thing taken or done in relation to such assessment, reassessment, levy or collection under the provisions of the principal Act before the 9th day of June, 1969, shall be deemed to be as valid and effective as if such assessment, reassessment, levy or collection or action or thing had been made, taken or done under the principal Act as amended by this Act and accordingly-

- (a) all acts, proceedings or things done or taken by the Government or by any officer of the Government or by any other authority in connection with the assessment, reassessment, levy or collection of such tax shall, for all purposes, be deemed to be and to have always been, done or taken in accordance with law;
- (b) no suit or other proceedings shall be maintained or continued in any court or before any authority for the refund of any such tax; and
- (c) no court shall enforce any decree or order directing the refund of any such tax.

(2) For the removal of doubts, it is hereby declared that nothing in Sub-section (1) shall be construed as preventing any person-

- (a) from questioning in accordance with the provisions of the principal Act, as amended by this Act, any assessment, reassessment, levy or collection of tax referred to in Sub-section (1), or
- (b) from claiming refund of any tax paid by him in excess of the amount due from him by way of tax under the principal Act as amended by this Act.

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 has been effected during the period between the 10th day of November, 1964 and the 9th day of June, 1969 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 Act 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 Act, 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.

6. The newly added Section 6(1A) makes a dealer liable to pay tax under the Central Act on the sales of goods effected by him in the course of inter-State

trade or commerce notwithstanding that no tax could be levied under the State Act on such a sale if it had taken place within the State and this amendment has been given retrospective effect from 1st October, 1958. By this amendment, law as declared in *State of Mysore v. Lakshminarasimhiah Setty & Sons* [1965] 16 S.T.C. 231 (S.C.), stands superseded. Section 9 validates all previous assessments and other proceedings made under the Central Act prior to 9th June, 1969, i. e., the date of coming into force of the Ordinance. Section 10, however, exempts from liability to pay tax where the dealer had not collected tax on sales in the course of inter-State trade or commerce effected during the period 10th November, 1964, to 9th June, 1969, i. e., the date on which the decision in *State of Mysore v. Lakshmi-narasimhiah Setty & Sons* [1965] 16 S.T.C. 231 (S.C.), was rendered by the Supreme Court and the date on which Ordinance No. 4 of 1969 was promulgated respectively.

7. Another amendment was made to the Central Act by the Central Sales Tax (Amendment) Act (61 of 1972), which came into force on 1st April, 1973. We are concerned with Section 12 of the Amendment Act, which amended Section 15(b) of the Central Act. Section 12 reads as follows:

12. In Section 15 of the principal Act, in Clause (b),-

(a) for the words "the tax so levied", the words "and tax has been paid under this Act in respect of the sale of such goods in the course of inter-State trade or commerce, the tax levied under such law" shall be and shall be deemed to have been, substituted, with effect from the 1st day of October, 1958;

(b) for the words "shall be refunded to such person", the words "shall be reimbursed to the person making such sale in the course of inter-State trade or commerce" shall be substituted.

8. By this amendment made to Section 15(b), a dealer can claim refund only if he satisfies two conditions, viz., that the goods should not only have been sold in the course of inter-State trade or commerce, but also tax must have been paid on such sales under the Central Act. The previous decision of this court in *Rafeeq Ahmed & Co. v. State of Andhra Pradesh* [1969] 24 S.T.C. 430, based on the language of the unamended Section 15(b) of the Central Act, stands superseded by this amendment. Unless the dealer satisfies both the conditions laid down by the amended Section 15(b), he cannot claim reimbursement of the tax levied under the State Act on the purchases of the said goods within the State. Appropriate amendments have been made to Section 6 of the State Act by Section 2 of the Andhra Pradesh General Sales Tax (Amendment) Act (4 of 1974), bringing in conformity with the Central amendment of Section 15(b).

9. The petitioner filed applications under Rule 27-A of the State Rules on 22nd November, 1969, for refund of the tax collected under the State Act for the years 1964-65, 1965-66 and 1967-68, i. e., after coming into force of Amending Act No. 28 of 1969. But, in respect of the assessment year 1966-67, the petitioner had filed an application for refund during the pendency of the writ petition which

was the subject-matter of the decision in *Rafeeq Ahmed & Co. v. State of Andhra Pradesh* [1969] 24 S.T.C. 430. These applications were disposed of by the Commercial Tax Officer on 25th February, 1972, firstly on the ground of delay and, secondly, on the ground that there was a change in the statutory provisions by reason of the Central Sales Tax (Amendment) Act (28 of 1969).

10. It is contended by Sri Sundara Rao, the learned counsel for the petitioner, that both the reasons given by the respondent for rejecting the applications are erroneous and unsound. His contention is that the amendment of Section 6 by inserting Section 6(1 A) by Amendment Act No. 28 of 1969 did not take away the right of the petitioner to claim refund u/s 15(b) as it stood then.

11. There is considerable force in this submission. But subsequent to the filing of these writ petitions, the Central Act has been further amended by Amendment Act No. 61 of 1972, amending Section 15(b) and providing that not only should the goods have been sold in the course of inter-State trade or commerce but actually the tax levied under the Central Act should have been paid in order to entitle the dealer to claim refund of the tax levied under the State law. This amendment has been given retrospective effect from 1st October, 1958. Section 6 of the State Act has also been suitably amended by the Andhra Pradesh General Sales Tax (Amendment) Act (4 of 1974). Admittedly, the petitioner has not paid any tax under the Central law on the sales effected by it in the course of inter-State trade or commerce. Therefore, one of the preconditions prescribed by Section 15(b), as amended, is not satisfied ; in which case the petitioner cannot claim refund or reimbursement of the tax made under the State Act.

12. Sri Sundara Rao contended that u/s 10 of Amendment Act No. 28 of 1969, a dealer who had not collected tax on the inter-State sales during the period 10th November, 1964, to 9th June, 1969, is exempted from liability to pay tax under the Central law. But this contention has no force. The exemption granted u/s 10 of Amendment Act No. 28 of 1969 has no relevance or bearing on the question of the claim for refund u/s 15(b) of the Central Act as amended by Act No. 61 of 1972. The claim for refund u/s 15(b) has to be determined solely with reference to the provisions of Section 15(b) as amended. As we have held that the petitioner has not admittedly paid any tax in respect of inter-State sales under the Central law, he will not be entitled to claim refund of the tax.

13. Next, it is contended by Sri Sundara Rao, the learned counsel for the petitioner, that large number of dealers, who were similarly placed like the petitioner, had obtained refund of the tax prior to the amendment of Section 15(b) by Central Amendment Act No. 61 of 1972 and that if the petitioner is to be denied the relief of refund, it would amount an invidious discrimination offending Article 14 of the Constitution.

14. There is no merit in this submission. Section 15(b), as amended, does not make any distinction between any dealer and dealer and it has uniform application. The fact that some of the dealers applications were disposed of

earlier and refund ordered, would not make the provisions of Section 15(b), as amended by Act No. 61 of 1972, discriminatory. Now, that Section 15(b) of the Central Act has been amended with retrospective effect from 1st day of October, 1958, all dealers falling within the purview of Section 15(b) would be entitled to claim refund only if they satisfy the conditions prescribed by the amended Section 15(b). We do not think, there is any hostile or invidious discrimination made by Section 15(b) against dealers who are similarly situated.

15. Both the contentions raised by the learned counsel for the petitioner fail and these writ petitions are dismissed. But as the claim for refund is being rejected in view of the amendments of the Central Act, which had come into force subsequent to the filing of the writ petitions, we direct each party to bear its own costs. Advocate's fee Rs. 100.