(1958) 09 AP CK 0017

In the Andhra Pradesh High Court

Case No : T.R.C. No''s. 59, 60, 61, 64 and 65 of 1956 and

Shaik Abdul Razak and Others — APPELLANT

Vs

State of Andhra Pradesh — RESPONDENT

Date of Decision : 01-09-1958

Acts Referred:

Citation : (1959) 10 STC 214

Hon'ble Judges : Chandra Reddy, C.J;N. Kumarayya, J

Bench : Division Bench

Advocate : P. Somasundaram and P. Suryanarayana, in T.R.C., D.V. Reddi Pantulu and M.S. Ramachandra Rao, for the Appellant;

Final Decision : Dismissed

Judgement

Chandra Reddy, C.J.—All these revision petitions raise common questions relating to the interpretation of rule 16(2)(ii) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939.

2. The petitioners are licensed dealers in untanned hides and skins and they sold them to persons who held no licence and who, in their turn, exported them out of the State of Andhra. The Taxing Authorities levied taxes on the petitioners in regard to sales effected by them to unlicensed dealers who, in their turn, sold the hides and skins to persons in Madras State, under rule 16(2)(ii) of the Rules. The imposition was contested on the ground that the tax could be collected only from persons who last purchased the hides and skins from the petitioners and exported them to Madras. This objection did not prevail with the Department and tax was levied on the petitioners. An appeal by them to the Sales Tax Appellate Tribunal was dismissed.

3. In these revision cases brought by the aggrieved assessees, the same question are raised. The point presented is that since rule 16(2)(ii) contemplates not only licensed dealers but also unlicensed dealers, the Department should look to the persons who last sold the hides and skins to someone outside the

State. In support of this proposition, reliance is placed on a judgment of a Full Bench of this Court in State of Andhra Pradesh v. Abdul Bari & Co. (1958 9 S.T.C. 231; 1958 A.L.T. 185). That the intendment of rule 16(2)(ii) is the one attributed to it is sought to be made out with reference to section 14-A of the Madras General Sales Tax Act, 1939.

4. We think the submissions are misconceived. Section 14-A has no bearing on the present enquiry. The object of that section is to take into the net of taxation all non-residents who make purchases through their agents. That cannot throw any light on the question as to whether the last dealer referred to in rule 16(2)(ii) of the Madras General Sales Tax (Turnover and Assessment) Rules includes the unlicensed dealer. The Full Bench decision cited above cannot also provide much assistance in this matter. All that was laid down there is that a purchase from an unlicensed dealer is not subject to tax. On the other hand, the Full Bench ruling of the Madras High Court, which formed the basis of the Full Bench decision, in Hajee Abdul Shukoor and Co. v. State of Madras (1955 6 S.T.C. 352) decided that the relevant rule contemplates only a sale by a licensed dealer. A consideration of the relevant rules unhampered by any authority can only lead to the conclusion that the department can look to the licensed dealer for payment of tax in situations such as these. Rule 15, in so far as it is relevant to this enquiry, recites :

"(1) Rules 6 to 13 shall not apply to licensed tanners and other licensed dealers in hides or skins in respect of their dealings in hides or skins; but the provisions of this and the following rule shall apply to them in respect of such dealings."

5. The other material rule is rule 16. Rule 16(2) reads thus :-

"No tax shall be levied on the sale of untanned hides or skins by a licensed dealer in hides or skins except at the stage at which such hides or skins are sold to a tanner in the State or are sold for export outside the State."

6. This sub-rule contemplates the levy of taxes on licensed dealers in hides or skins on either of the two occasions; namely, either at the stage of sale to a tanner in the State, or when the sale is effected for export outside the State. Sub-rule (i) of rule 16(2) prescribes the manner in which the single point is to be fixed when the chain of transactions end in a sale to a tanner and sub-rule (ii) prescribes the single point when the dealings terminate in a sale for export outside the State.

7. It is useful to extract sub-rules (i) and (ii) at this stage.

"(i) In the case of all untanned hides or skins sold to a tanner in the State, the tax shall be levied from the tanner on the amount for which the hides or skins are bought by him."

(ii) In the case of all untanned hides or skins which are not sold to a tanner in the State but are exported outside the State, the tax shall be levied from the dealer who was the last dealer not exempt from taxation u/s 3(3) who buys them in the State on the amount for which they were bought by him."

8. On a consideration of these rules, the only reasonable conclusion to be reached is that they envisage only licensed dealers. The main sub-rule, i.e., rule 16(2), specifically mentions the licensed dealer. It is for that reason there is no specific reference in clause (ii) of sub-rule (2) to licensed dealers. Having regard to the collocation of all these expressions and the context in which they are used, it is clear that sub-rule (ii) does not take in an unlicensed dealer. A specific provision is made in regard to unlicensed dealer in rule 16(5) which provides :

"Sales of hides or skins by dealers other than licensed dealers in hides or skins shall, subject to the provisions of section 3, be liable to taxation on each occasion of sale."

9. The scheme of all the rules read with section 5(vi) of the Madras General Sales Tax Act, 1939, is to confer a benefit on licensed dealers. What section 5, clause (vi), says is this :

"Subject to such restrictions and conditions as may be prescribed, including conditions as to licences and licence fees -

the sale of hides and skins, whether tanned or untanned shall be liable to tax u/s 3, sub-section (1), only at such single point in the series of sales by successive dealers as may be prescribed."

10. It cannot be contended that the same advantage was sought to be conferred even on unlicensed dealers. That being the position, we think that under rule 16(2)(ii) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, the dealer from whom the tax is to be levied is the last licensed dealer and not the last unlicensed dealer. Admittedly, the persons to whom the goods were sold by the petitioners were unlicensed persons. Therefore, the department was justified in collecting tax from the petitioners in respect of their sales to persons who exported the goods to the Madras State. On this discussion, it follows that the order under revision cannot be successfully impugned. The revision petitions are dismissed with costs. The advocate''s fee is fixed as below :

T.R.C. No. 59 of 1956 - Rs. 50; T.R.C. No. 60 of 1956 - Rs. 150; T.R.C. No. 61 of 1956 - Rs. 100; T.R.C. No. 64 of 1956 - Rs. 150; and T.R.C. No. 65 of 1956 - Rs. 50.