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**(1971) 10 AP CK 0006**

**In the Andhra Pradesh High Court**

**Case No :** Writ Petition No's. 3054, 3055, 3076 and 3077 of 1971

Sri Krishna Coconut Co. and Another

APPELLANT

Vs

Commercial Tax Officer

RESPONDENT

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**Date of Decision :** 11-10-1971

**Acts Referred:**

Central Sales Tax Act, 1956 — Section 15, 6, 9

**Citation :** (1973) 30 STC 461

**Hon'ble Judges :** K.V.L. Narasimham, C.J.; Alladi Kuppuswami, J

**Bench :** Division Bench

**Advocate :** M. Suryanarayana Murthy, for the Appellant; D.V. Sastry, Fifth Government Pleader for Central Sales Tax Cases, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Alladi Kuppuswami, J.—The petitioner in W.P. Nos. 3054 of 1971 and 3055 of 1971 is Sri Krishna Coconut Company, a firm represented by its partner, A. L. Narasimham. The petitioner was served with notices to pay the Central sales tax of Rs. 30,497.88 due on the turnover for the months of January, February and March, 1971, and Rs. 21,714.55 for the months of April and May, 1971. He has filed Writ Petitions Nos. 3055 of 1971 and 3054 of 1971 praying for the issue of a writ of mandamus forbearing the respondent, namely, Commercial Tax Officer, Amalapuram, from enforcing the said notice in respect of the period January to March, 1971, and the notice for the period April and May, 1971, respectively.

2. The writ petitioner in W.P. Nos. 3076 of 1971 and 3077 of 1971 is a firm, Yenduri Ramarao and Sons represented by its partner, Viswanadham. They received a notice for payment of Central sales tax of Rs. 5,017.39 for the period January to March, 1971, and Rs. 5,552.71 for the period April to June, 1971, and the two writ petitions are filed for the issue of writ of mandamus forbearing the respondent from enforcing the said notices. The contentions raised in all the writ petitions are identical and, therefore, the writ petitions were heard together and are being disposed of by a common judgment.

3. The petitioners are dealers in coconut. They purchase coconuts within the State and export them to places outside the State. Under the Andhra Pradesh General Sales Tax Act (in this judgment referred to as the State Act), the sales tax is payable by a dealer at 3 per cent, on the turnover at the point of the last purchase in regard to coconuts. The petitioners have opted for assessment under Rule 17 of the Andhra Pradesh General Sales Tax Rules made under the State Act and have been submitting monthly returns in form A-2 prescribed by the Rules and have been paying tax every month on the turnover shown in those returns. In regard to sales made by them in the course of inter-State trade they are liable to pay Central sales tax, but u/s 15 of the Central Sales Tax Act (in this judgment referred to as the Central Act) read with Section 6, proviso, of the State Act, where a tax has been levied under the State Act in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, the tax so levied shall be refunded to such person in such manner and subject to such conditions as may be provided in any law in force in that State. Coconut is one of the declared goods. The petitioners, therefore, applied for refund of the tax paid Under the State Act on the ground that they had sold the coconuts in the course of inter-State trade. The contention of the petitioners in these writ petitions is that until and unless those applications for refund are considered and disposed of, they cannot be called upon to pay the Central sales tax. Hence, they have prayed for the issue of writ of mandamus directing the respondent to forbear from collecting the Central sales tax until their applications for refund of the State tax paid by them are disposed of. They say that if the applications for refund are considered earlier, instead of ordering refund of the tax, the tax paid may be adjusted as against the tax payable under the Central Sales Tax Act, the two taxes being of identical amounts at 3 per cent.

4. The respondent in his counter has stated that the proceedings in the two cases are independent and the petitioners are liable to pay Central sales tax as and when there is a sale in the course of inter-State trade. There is no provision either in the Central Act or in the State Act enabling adjustment of the amount due under the Central Act against the amounts paid by way of tax under the State Act. The right to refund under the State Act has nothing to do with the levy under the Central Act. It is also contended that the question of refund under the State Act can be decided only after the assessment is completed.

5. The relevant provisions of the two Acts and the Rules made thereunder are as follows :

Section 6 of the Central Sales Tax Act states that a dealer shall be liable to pay tax under that Act on a sale of any goods effected by him in the course of inter-State trade or commerce during any year. Section 9 deals with the levy and collection of tax and penalties. Section 9(1) provides that the tax payable under the Act shall be levied and collected by the Government in accordance with the provisions of Sub-section (2) in the State from which the movement of the goods

commenced. Under Sub-section (2), subject to the other provisions of the Act and the Rules made thereunder, the authorities for the time being empowered to assess, reassess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, reassess, collect and enforce payment of tax, as if the tax is a tax payable under the sales tax law of the State. For this purpose they may exercise all or any of the powers they have under the general sales tax law of the State. Section 15, which has already been referred to, provides that in respect of declared goods every sales tax law of a State shall be subject to the following restrictions and conditions, namely:

(a) the tax payable under the law in respect of any sale or purchase of such goods inside the State shall not exceed three per cent of the sale or purchase price thereof, and such tax shall not be levied at more than one stage;

(b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, the tax so levied shall be refunded to such person in such manner and subject to such conditions as may be provided in any law in force in that State.

6. The State Act provides u/s 6, proviso, that where any declared goods on which a tax has been levied are sold in the course of inter-State trade or commerce the tax so levied shall be refunded to such person, in such manner and subject to such conditions as may be prescribed. This is in consonance with Section 15 of the Central Act. Rules have been made under the Central Act called the Central Sales Tax (Andhra Pradesh) Rules, 1957. Under Rule 14-A of the said Rules, every dealer has to submit so as to reach the assessing authority on or before the 25th of every month a return showing the total and net turnovers of his transactions including those in the course of inter-State trade or commerce and in the course of export of the goods out of the territory of India during the preceding month and the amount or amounts collected by way of tax. The return shall be accompanied by a receipt from a Government treasury or a crossed cheque in favour of the assessing authority for the full amount of the tax payable for the month to which the return relates.

7. It is clear from a perusal of Sections 6 and 9 and Rule 14-A of the Rules that every dealer who is liable to pay Central sales tax and who has opted for submitting the monthly return is bound to submit a return before 25th of the succeeding month and also to pay the full amount of tax payable for the month to which the return relates simultaneously.

8. No provision of the Act or the Rules was pointed to us which enables the assessee to postpone payment of the Central sales tax due until the application for refund of the State tax is disposed of.

9. In view of the clear terms of Rule 14-A, we are of the view that the assessee is bound to pay the Central sales tax at the time when he submits the monthly

return.

10. It is, however, argued by Sri M. Suryanarayana Murthy, the learned counsel for the petitioners, that u/s 15 of the Central Act read with Section 6, proviso, of the State Act the petitioners are entitled to a refund of the State tax paid by them, if the goods are sold in the course of inter-State trade or commerce. He submits that as Section 15 provides that where a tax has been levied under the State Act in respect of declared goods and such goods are sold in the course of inter-State trade or commerce the tax so levied shall be refunded ; the right to refund of the State tax arises the moment the goods are sold in the course of inter-State trade or commerce and it is not conditional upon the petitioners paying the Central tax due on such inter-State sales. He relies, in this connection, on the decision in Rafeeq Ahmed and Co. Vs. State of Andhra Pradesh and Another, where it is observed that the right to refund arises the moment the goods purchased are sold in the course of inter-State trade and there is no warrant for the imposition of any further condition for getting a refund of the tax levied under the State Act. He also drew our attention to the decision of the Mysore High Court in Munshi Abdul Rahiman & Bros. v. Commercial Tax Officer [1967] 20 S.T.C. 89, where Rule 39-A of the Mysore Sales Tax Rules, imposing a condition that the assessee before claiming refund must have paid tax under the Central Sales Tax Act, was struck down. It was observed that the actual payment of tax under the Central Sales Tax Act is not specifically mentioned in Section 15 of the Central Act and the only condition for the refund of sales tax is that the goods should have been sold in the course of inter-State trade. Hence, it was held that the condition imposed under Rule 39-A that the assessee must have paid the tax in respect of such sale before claiming refund is beyond the scope of the rule-making authority. While there is force in this contention, we do not see how this contention is of any assistance to the petitioners in this case. The relevant rule under which the application for refund is made is Rule 27-A of the Andhra Pradesh General Sales Tax Rules. The rule does not lay down as a condition for the application for the refund that the dealer should pay the Central tax in the first instance. It is not also the contention of the respondent in the counter-affidavit that the application for refund could be considered only if the Central sales tax is paid. If the authorities had taken up the position that the application for refund cannot be considered unless the Central sales tax is paid, the petitioners would have been justified in contending that such a requirement is not contemplated by the rule. But the petitioners are taking up a converse position in this case. They are contending that the authorities cannot demand the Central sales tax due by them until their application for refund is disposed of.

11. The right to levy Central sales tax will have to be decided with reference to the provisions of the Central Sales Tax Act and the Rules made thereunder. It is not denied that the transactions are exigible to Central sales tax as they were made in the course of inter-State trade. Hence, as the dealers had opted to the scheme of monthly returns they will have to pay Central sales tax on the

transactions of sale under Rule 14-A of the Central Sales Tax (Andhra Pradesh) Rules along with the monthly return.

12. As observed earlier, the mere fact that the petitioners have applied for a refund or are entitled to refund of the tax paid under the State Act, is no ground for resisting a demand for payment of the Central sales tax under the provisions of that Act. The claim for refund of the tax paid under the State Act is a different and independent right which has to be worked out separately. The levy under the Central Sales Tax Act will depend upon the question whether the transaction is liable to Central sales tax and cannot be made to depend upon the right to obtain a refund under the State Act. We are, therefore, satisfied that the petitioners are not entitled to ask this court for the issue of a writ of mandamus directing the respondent from forbearing from the collection of Central sales tax until their application for refund of the State tax paid by them is heard and disposed of.

13. The respondent has, however, gone further and urged that the application for refund can be decided only after the assessment proceedings under the State law are completed. It is urged that the assessment is on the turnover of the year and there cannot be a piece-meal refund with respect to each monthly turnover. Even though the petitioners are submitting monthly returns and paying the taxes due under the State law along with the returns and provisional assessments are made from time to time, the final assessment will be only made at the end of the year under Rule 17, Sub-rule (5). It is, therefore, contended that the application for refund of State tax can be considered only at the time the final assessment under the State law is completed after the end of the assessment year. On the other hand, it is the contention of the assessee that it is true that the assessments made after each monthly return are only provisional assessments under Rule 17, Sub-rule (4), but the right of the applicants for refund of the tax paid by them under Rule 27-A has to be judged with reference to Rule 27-A which deals with the refund of such tax. Under Rule 27-A(3), the only requirement is that the application for refund should be filed within three months from the end of the month in which he sold the goods in the course of inter-State trade.

14. There is no provision, in the Act or the Rules which precludes the authorities from considering and disposing of the application for refund before the assessment is completed. All that is required is that the authorities must be satisfied that the tax under the State Act has been paid and secondly, the declared goods in respect of which refund is claimed were subsequently sold in the course of inter-State trade or commerce. If the authorities are satisfied that these two conditions exist, there is no impediment in the way of the authorities considering the application for refund before the final assessment is completed at the end of the year.

15. There is nothing in the Act which compels the authorities to consider the application for refund the very moment the application is made; such a course is not practicable as the authorities have to consider the various facts before

deciding whether the petitioner is entitled to refund. In some cases it is possible that applications for refund have to be postponed until the assessment under the State Act is completed and it would not be possible to pass orders for refund earlier. But the question when these applications for refund are to be disposed will have to be left to the discretion of the officer. This court can only interfere when the delay is so great that it would amount to a refusal to consider the application at all. We, however, fail to see any provision in the Act which places an embargo on the authorities from considering an application for refund until the assessment is completed at the end of the assessment year.

16. We have no doubt that the authorities will exercise the discretion properly in each case bearing in mind that the assessee is entitled as of right to a refund whenever tax is collected from him in respect of declared goods under the State law and he sells the same goods in the course of inter-State trade. If Central sales tax is again collected in respect of those transactions and the application for refund of the tax to which the assessee is entitled under the Act is unduly delayed, the Government would in effect be retaining amounts to which the assessee will be entitled and the assessee will be put to considerable hardship.

17. In so far as W.P. Nos. 3055 of 1971 and 3076 of 1971 are concerned, they relate to the period January to March, 1971, that is, part of the year 1970-71. As the assessment year is over, even according to the respondent, there is no impediment in considering the application for refund along with the assessment for the said year. We, therefore, direct that the application for refund in respect of these periods will be heard and disposed of expeditiously along with assessments for these years.

18. Subject to the above direction, the writ petitions are dismissed, but in the circumstances without costs. Advocate's fee Rs. 50 in each.