(1996) 08 AP CK 0083

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 147 of 1989

Sri Krishna Rice Mills — APPELLANT

Vs

State of Andhra Pradesh — RESPONDENT

Date of Decision : 07-08-1996

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 6
Central Sales Tax Act, 1956 — Section 6(2)
Central Sales Tax Rules, 1957 — Rule 12

Citation : (1997) 104 STC 475

Hon'ble Judges : S.S. Mohammed Quadri, J;B.S. Raikote, J

Bench : Division Bench

Judgement

Syed Shah Mohammed Quadri, J.—The assessee is the petitioner in this T.R.C., filed u/s 22(1) of the A.P. General Sales Tax Act, 1957 (for short "the APGST Act"). The assessee is carrying on business in paddy and rice and is registered as such on the rolls of the Commercial Tax Officer, Tadepalli-gudem. In the assessment year 1979-80 the Commercial Tax Officer exempted a net turnover of Rs. 10,52,750 and assessed to tax the turnover of Rs. 5,60,290. However, the Deputy Commissioner of Commercial Taxes, in exercise of the power u/s 20(2) of the Act, proposed to revise the order of assessment, withdraw the exemption and bring to tax the exempted turnover. After issuing notice and considering the objections filed by the assessee the exempted turnover was brought to tax by order dated January 24, 1986. The petitioner-assessee carried the matter in appeal before the Sales Tax Appellate Tribunal. The Tribunal confirmed the order of the Deputy Commissioner and dismissed the appeal on November 28, 1988. From the said order of the Tribunal the present revision case arises.

2. Mr. Raji Reddy, the learned counsel for the petitioner, submits that the exemption was granted u/s 6-A of the APGST Act by the Commercial Tax Officer and the authorities erred in examining the case u/s 6(2) of the Central Sales Tax Act, for short "the CST Act".

3. A perusal of the order of the Deputy Commissioner, the explanation given by the petitioner and the order of the Tribunal shows that this point was never urged by the petition before the authorities. We, therefore, do not permit him to raise the said point in this revision for the first time.

4. It is next contended that even if the exemption was granted u/s 6(2) of the CST Act, filing of "C" form was not mandatory and the exemption ought not to have been withdrawn by the Deputy Commissioner. We are afraid we cannot accept this contention.

5. Section 6(2) of the CST Act reads as follows :

"6. Liability to tax on inter-State sales. - (1) ....

(2) Notwithstanding anything contained in sub-section (1) or sub-section (1-A), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to anther, any subsequent sale during such movement effected by a transfer of documents of title to such goods, -

(A) to the Government, or

(B) to a registered dealer other than the Government, if the goods are of the description referred to in sub-section (3) of section 8,

shall be exempt from tax under this Act :

Provided that no such subsequent sale shall be exempt from tax under this sub-section unless the dealers effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time or within such further time as the authority may, for sufficient cause, permit, -

(a) a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in a prescribed form obtained from the prescribed authority; and

(b) if the subsequent sale is made, -

(i) to a registered dealer, a declaration referred to in clause (a) of sub-section (4) of section 8; or

(ii) to the Government, not being a registered dealer, a certificate referred to in clause (b) of sub-section (4) of section 8 :

Provided further that it shall not be necessary to furnish the declaration or the certificate referred to in clause (b) of the preceding proviso in respect of a subsequent sale of goods if -

(a) the sale or purchase of such goods is, under the sales tax law of the appropriate State, exempt from tax generally or is subject to tax generally at a rate which is lower than four per cent (whether called a tax or fee to by any other name); and

(b) the dealer effecting such subsequent sale proves to the satisfaction of the authority referred to in the preceding proviso that such sale is of the nature referred to in clause (A) or clause (B) of this sub-section."

6. From a perusal of sub-section (2) of section 6 of the CST Act, extracted above, it is clear that in the case of sale of any goods in the course of inter-State trade or commerce, which has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods either to the Government or to a registered dealer other than the Government is exempted from the tax provided the goods are of the description referred to in sub-section (3) of section 8 but this exemption is subject to the proviso that the dealer effecting the sale should furnish to the prescribed authority in the prescribed manner and within the prescribed time or within such further time as such authority may, for sufficient cause, permit a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in a prescribed form obtained from the prescribed authority or if the subsequent sale is made to a registered dealer, a declaration referred to in clause (a) of sub-section (4) of section 8 or if the subsequent sale is made to the Government, not being a registered dealer, a certificate referred to in clause (b) of sub-section (4) of section 8. However, furnishing of such declaration or the certificate, referred to above, in respect of subsequent sale is dispensed with if the sale or purchase of such goods is exempt from the tax generally or is subject to tax generally at a rate which is lower than four per cent under the sales tax law of the appropriate State and the dealer effecting such subsequent sale proves to the satisfaction of the authority, referred to in the preceding proviso, that such sale is of the nature referred to in clause (A) or clause (B) of sub-section (2) of section 8.

7. It would be appropriate to read here sub-rule (3) of rule 12 of the Central Sales Tax (Andhra Pradesh) Rules, 1957, which is as under :

"Rule 12. (1) and (2) ....

(3)(i) In the case of a first sale occasioning the movement of goods referred to in section 6(2) or a first sale effect by transfer of documents of title to the goods referred to in section 6(2) the registered dealer selling the goods or any person authorised by him in this behalf may furnish a certificate in form E-1 duly filled in and signed by him to the purchasing dealer to enable him to claim exemption from tax on his subsequent sale of such goods, if any under sub-section (2) of section 6 of the Act. The registered dealer furnishing the certificate in form E-1 shall retain with him the counterfoil of the form.

(ii) For the purpose of claiming exemption from tax on his subsequent sale under sub-section (2) of section 6, the purchasing dealer who effects a subsequent sale to another registered dealer or to the Government not being a registered dealer by transfer of documents of title to the goods during their movement, from one State to another, shall furnish to the notified authority (i) the portion marked ''original'' of the form E-1 received by him from the registered dealer from whom he purchased the goods and (ii) the original of the declaration in form ''C'' received from the registered dealer, or the original of the declaration in form ''D'' received from a duly authorised officer of the Government to whom he sold the goods :

Provided that when E-1 forms printed under the authority of the State Government or the Commissioner of Commercial Taxes are not readily available for use for any reason the E-1 forms containing the signature and official seal of the assessing authority or registering authority having jurisdiction over the consignee shall be used in lieu of such printed E-1 forms."

8. This rule enjoins that in case of a first sale occasioning the movement of goods referred to in section 6(2) or a first sale effected by transfer of documents of title to the goods referred to in section 6(2) the registered dealer selling the goods or any person authorised by him in this behalf may furnish a certificate in form E-1 duly filled in and signed by him to the purchasing dealer to enable him to claim exemption from tax on his subsequent sale of such goods, if any, under sub-section (2) of section 6 of the Act. The registered dealer who furnishes the certificate in form E-1 shall retain with him the counterfoil of the form. With regard to the exemption on the subsequent sale, under sub-section (2) of section 6, the said rule provides that the purchasing dealer who effects a subsequent sale to another registered dealer or to the Government, not being a registered dealer, by transfer of documents of title to the goods during their movement from one State to another, shall furnish to the notified authority (i) the portion marked "original" of the form E-1 received by him from the registered dealer from whom he purchased the goods; and (ii) original of the declaration in form "C" received from the registered dealer, or the original of the declaration in form "D" received from a duly authorised officer of the Government to whom he sold the goods.

9. Thus, a combined reading of section 6(2) of the CST Act and rule 12 of the CST Rules makes it clear that to claim exemption u/s 6(2) of the CST Act the dealer has to furnish (i) the original Form E-1 which he received from the dealer from whom he purchased the goods and (ii) form "C" or form "D", as the case may be, obtained from the person to whom the goods were sold in the course of the inter-State sale. These requirements are mandatory and in the absence of furnishing any one of the forms, the dealer will not be entitled to exemption. The same view is taken by two Division Benches of this Court in Jadhavjee Laljee Vs. State of Andhra Pradesh, and Jagannadha Baldwa Vs. State of Andhra Pradesh, .

10. However, Sri Raji Reddy placed reliance on the judgment of the Division Bench of the Madhya Pradesh High Court in Chimanlal Voerchand Vs. Additional

Assistant Commissioner of Sales Tax and Another, in support of his contention that filing of "C" form is not mandatory. In that case the dealer did not produce either form "E-1" or declaration in form "C", to claim exemption. The learned Judges in that case held that refusal of exemption from sales tax was bad. Having regard to the judgments of our High Court in Jadhavjee Laljee Vs. State of Andhra Pradesh, and Jagannadha Baldwa Vs. State of Andhra Pradesh, , with respect we are unable to agree with the view expressed by the Madhya Pradesh High Court in the abovesaid judgment. We may point out that in Jadhavjee Laljee Vs. State of Andhra Pradesh, , a similar contention was raised relying upon another judgment of the Division Bench of the Madhya Pradesh High Court in Bhojmal and Sons Vs. Commissioner of Sales Tax, , but the Division Bench of our High Court did not agree with the reasoning of the Madhya Pradesh High Court and observed that the logical consequences flowing from the ratio of that judgment was that all second and subsequent sales would be exempt from tax where the first inter-State sale of such goods was exempt, and that could not have been the intention underlying the Act. With respect, we adopt the same reasoning of the learned Judges.

11. For the above reasons, we find no merit in the T.R.C. It is accordingly dismissed with costs.

12. Petition dismissed.