(1996) 07 AP CK 0069

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 14 of 1990

State of Andhra Pradesh APPELLANT

Vs

Andhra Pradesh Dairy Development Corporation Limited RESPONDENT

Date of Decision : 18-07-1996

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 6

Citation : (1997) 2 ALD 487 : (1997) 106 STC 126

Hon'ble Judges : S.S. Mohammed Quadri, J;R. Bayapu Reddy, J

Bench : Division Bench

Judgement

Syed Shah Mohammed Quadri, J.—This tax revision case is filed by the State against the order of the Tribunal in T.A. No. 344 of 1987 dated December 18, 1989, holding that no tax is payable on the milk u/s 6A of the A.P. General Sales Tax Act, 1957 (for short "the APGST Act"), which is utilised in the production of Vijaya Spray Baby Milk Powder.

2. The question that arises for consideration in this tax revision case is, whether the milk which is utilised in the production of Vijaya Spray Baby Milk Powder, is liable to be taxed u/s 6-A of the APGST Act.

3. This question arises out of the order of assessment of the turnover of the respondent-assessee pertaining to the assessment year 1979-80. Section 6-A as it stood in the relevant assessment year was in the following terms :

"6-A. Levy of tax on turnover relating to purchase of certain goods. - Every dealer, who in the course of business, -

(i) purchases any goods (the sale or purchase of which is liable to tax under this Act) from a registered dealer in circumstances in which no tax is payable u/s 5 or u/s 6, as the case may be, or

(ii) purchases any goods (the sale or purchase of which is liable to tax under this Act) from a person other than a registered dealer, and

(a) either consumes such goods in the manufacture of other goods for sale or otherwise, or

(b) disposes of such goods in any manner other than by way of sale in the State, or

(c) despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce,

shall pay tax on the turnover relating to purchasing aforesaid at the same rate at which but for the existence of the aforementioned circumstances, the tax would have been leviable on such goods u/s 5 or section 6."

4. A perusal of the provision, extracted above, shows that the tax u/s 6-A is on the purchase of goods and not on the sale of the goods. It postulates two situations in which the liability u/s 6-A arises. The first situation is, where a dealer, in the course of his business, purchases any goods from a registered dealer, which is liable to be taxed, whether on his sale or purchase, but in view of the circumstances mentioned in sections 5 and 6, no tax liability arises; and the second situation is where a dealer in the course of his business purchases any goods from a person other than a registered dealer and the sale or purchase of such goods is liable to tax under the Act. In any one of the above two situations the liability to pay tax u/s 6-A would arise subject to the fulfilment of any one of the following three requirements :

(a) where on purchase of such goods the dealer consumes such goods in the manufacture of other goods for sale or otherwise; or

(b) where the dealer after purchase of such goods disposes them of in any manner other than by way of sale in the State.

It may be noted here that, if such goods are sold in the State, then the second condition is not satisfied. The disposal of the goods should be in a manner other than by way of sale in the State. For example, free distribution to charitable institutions, gifts, etc.

(c) where such dealer despatches such goods to a place outside the State. An exception to this condition is where the despatch is the direct result of sale of purchase in the course of inter-State trade or commerce.

5. To attract the liability to pay sales tax u/s 6-A, on the purchase of goods, it is not enough to show that one of the aforementioned two situations exists. The Revenue has also to show that any one of the abovementioned three requirements is fulfilled. In this case, the assessee purchased milk from an unregistered dealer and it is an admitted fact that the sale of the milk is taxable as general goods, so the second of the abovementioned situations is present. But then it has to be further examined whether any one of the three requirements, is also fulfilled. Admittedly, requirement (a) is not attracted because it is nobody''s case that the milk has been consumed in the manufacture of other goods for it is

for the conversion of milk into spray baby milk powder which does not amount to manufacture. It is a settled position so far as this State is concerned. Requirement (b) is also not fulfilled because Revenue is not contending that the assessee has disposed of the spray milk in a manner other than by way of sale. Indeed, it appears that the goods are meant to be sold. Regarding the third requirement (c) also there is no dispute that it does not apply. If that be the position, then section 6-A cannot be invoked to levy sales tax on the purchase of milk. In that view of the matter, we confirm the order of the Tribunal and dismiss the tax revision case. No costs.

6. Petition dismissed.

