(1989) 02 AP CK 0018

In the Andhra Pradesh High Court

Case No : T.R.C. No. 406 of 1985

State of Andhra Pradesh — APPELLANT

Vs

Bakelite Hylam Limited — RESPONDENT

Date of Decision : 15-02-1989

Acts Referred:

Andhra Pradesh General Sales Tax Rules, 1957 — Rule 6

Citation : (1990) 76 STC 192

Hon'ble Judges : V. Neeladri Rao, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : The Government Pleader for Commercial Taxes, for the Appellant; P. Venkatarama Reddy, for the Respondent

Judgement

B.P. Jeevan Reddy, J.—The only question in this tax revision case is whether the value of the goods returned by the purchasers to the dealer should be excluded from the turnover.

2. A few facts need be stated : Goods of the value of Rs. 9,140.70 were brought to tax after including their turnover in the turnover relating to the assessment year 1976-77. Subsequently, assessment for the assessment years 1977-78 and 1978-79 was taken up. In the assessment proceedings relating to the assessment year 1977-78 the assessee claimed that the value of the returned goods should be excluded from the turnover. The assessing authority and the first appellate authority declined to do so, but the Tribunal acceded to this request, relying upon rule 6(b) of the Andhra Pradesh General Sales Tax Rules. Rule 6(b) reads as follows :

"6. The tax or taxes under sections 5, 5-A, 6 or notified u/s 9(1) shall be levied on the net turnover of a dealer. In determination the net turnover, the amounts specified in clauses (a) to (i) shall, subject to the conditions specified therein, be deducted from the total turnover of a dealer -

(a) * * *

(b) (i) all amount allowed to purchasers in respect of goods returned by them to the dealer when the goods are taxable on sales provided the accounts show the date on which the goods were returned and the date on which and the amount for which refund was made;

(ii) all amounts received from the sellers in respect of goods returned to them, by the dealer, when the goods are taxable on the purchase value provided that the accounts show the date on which the goods were returned and the date on which and the amount for which refund was received :

Provided that the claim for deduction on account of such returned goods is preferred within a period of one year form the date of service of order of assessment on the dealer."

3. A reading of this rule shows that a claim for deduction on account of returned goods should be preferred within a period of one year from the date of service of the order of assessment on the dealer. Of course, the claim for deduction should also satisfy the requirement of sub-clause (i) of sub-clause (ii) of clause (b), as the case may be. The proviso clearly shows that deduction can be made only out of the turnover relating to the assessment year in which the value of the returned goods was included. That is why the claim is tacked on to the service of the order of assessment relating to that year. Deduction cannot be given in any other assessment year. To be more precise, on the facts of this case it would mean that this deduction should be made only for the assessment year 1976-77; it cannot be allowed for the assessment year 1977-78, or for that matter any other assessment year.

4. We may also mention that in this case the claim was made perfectly in time. Assessment order relating to the assessment year 1976-77 was made on 15th October, 1979 - the period of one year therefrom expired on 15th October, 1980. The claim in this case was made even on 10th October, 1979, i.e., even before the assessment order was served. We clarify that such a claim can be made even before the assessment order is made. In such a situation, necessary orders will be passed in the assessment order itself. The proviso to rule 6(b) only says that such a claim can also be made within one year of the receipt of the assessment order. Since the claim in this case was made at the proper time, it ought to be considered on merits and orders passed.

5. For the above reasons, we direct that the turnover of Rs. 9,140.70 relating to returned goods should be given deduction in the assessment relating to the assessment year 1976-77. Necessary orders shall be passed by the Commercial Tax Officer concerned, forthwith.

6. It is, however, made clear that the said deduction cannot be claimed, nor can it be granted in the assessment relating to the assessment year 1977-78, or for that matter in any other assessment year.

7. Tax revision case is disposed of with the above directions. No costs.

Advocate''s fee Rs. 150.

8. Petition disposed of accordingly.

