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(1994) 11 AP CK 0032

In the Andhra Pradesh High Court

Case No : T.R.C. No. 210 of 1986

State of Andhra Pradesh APPELLANT

Vs

Blue Star Limited RESPONDENT

Date of Decision : 07-11-1994

Acts Referred:
Andhra Pradesh General Sales Tax Act, 1957 — Section 22(1), 38

Citation : (1995) 96 STC 374

Hon'ble Judges : S.S. Mohammed Quadri, J;A.S. Bhate, J

Bench : Division Bench

Advocate : The Government Pleader for Commercial Taxes, for the Appellant; A.K. Jaiswal, for the Respondent

Judgement

Syed Shah Mohammed Quadri, J.—In this tax revision case filed u/s 22(1) of the Andhra Pradesh General Sales Tax Act, 1957 (for short "the State Act") by the State, the turnover of the respondent was assessed to sales tax under the State Act for the assessment years 1972-73, 1973-74 and 1974-75. Now we are concerned with the assessment in respect of the assessment year 1974-75. The assessee is a dealer in electronic goods. It imported certain goods from United States of America for Defence Research Laboratories. In some of the transactions, the goods were directly handed over to the Defence Research Laboratories and in other cases they were routed through the Director of Supplies and Disposals. Before the assessing authority, the assessee urged that as the transactions fall under sub-section (2) of section 5 of the Central Sales Tax Act, 1956 (for short "the Central Act"), the turnover relating to those transactions cannot be taxed u/s 38(ii) of the State Act. This plea was not accepted both by the assessing authority as well as the appellate authority. However, on further appeal, the Sales Tax Appellate Tribunal allowed the appeal of the assessee holding that the transactions fall u/s 5(2) of the Central Act.

2. The short question that arises for consideration in this revision is whether the turnover of the assessee in respect of the transactions in question is exempted

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from tax in view of the provisions of section 38(ii) of the State Act.

3. It would be useful to read section 38 of the State Act which is in the following terms :

"38. Act not to apply to sales or purchases outside the State, in the course of import or export, etc. - Nothing contained in this Act shall be deemed to impose or authorise the imposition of a tax on the sale or purchase of any goods, where such sale or purchase takes place, -

(i) outside the State; or

(ii) in the course of the import of the goods into, or export of the goods out of the territory of India; or

(iii) in the course of inter-State trade or commerce.

Explanation. - The provisions of Chapter II of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), shall apply for the purpose of determining when a sale or purchase takes place in the course of inter-State trade or commerce or outside a State or in the course of import or export."

4. A plain reading of the above provision makes it clear that if the sale or purchase of the goods takes place in the course of the import of the goods into or export of the goods out of the territory of India, the provisions of the Act will not be attracted.

5. Sub-section (2) of section 5 of the Central Act raises a statutory presumption as to when a sale or purchase of the goods would be deemed to be in the course of the import of the goods into the territory of India. It provides that the sale or purchase of the goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India. The result of the revision ultimately depends on the question whether the purchase of the goods occasioned the import of the goods into the territory of India. This is purely a question of fact. On the material placed before it, the Tribunal recorded the finding that the transactions in question occasioned the movement of the goods into the territory of India on account of the purchase of the goods. In view of this finding of fact, the contention that the transaction does not fall within the purview of sub-section (2) of section 5 of the Central Act, cannot be accepted. The revision, therefore, fails and we accordingly dismiss the same, but in the circumstances of the case, we direct the parties to bear their own costs.

6. Petition dismissed.

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