(1991) 02 AP CK 0003

In the Andhra Pradesh High Court

Case No : T.R.C. No. 151 of 1990

State of Andhra Pradesh APPELLANT

Vs

Deccan Leathers Ltd. RESPONDENT

Date of Decision : 28-02-1991

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 22, 38, 5(3), 6
Central Sales Tax Act, 1956 — Section 14, 15, 5, 8(2A)

Citation : (1991) 82 STC 129

Hon'ble Judges : Yogeshwar Dayal, C.J;Upendralal Waghray, J

Bench : Division Bench

Advocate : M. Ramaiah, Government Pleader for Commercial Taxes, for the Appellant;

Judgement

Yogeshwar Dayal, C.J. and Upendralal Waghray, J.—This revision u/s 22 of the Andhra Pradesh General Sales Tax Act, 1957, is filed by the State against the order of the Sales Tax Appellate Tribunal dated 20th September, 1988, in T.A. No. 608/1988 by which it allowed the assessee''s appeal setting aside the judgment of the Appellate Deputy Commissioner, which had confirmed the order of the Commercial Tax Officer.

2. We are concerned with the assessment year 1980-81 and the controversy is about refund of State sales tax paid on declared goods, as those declared goods are subsequently subject to Central sales tax because of inter-State sale. The facts found are : The assessee purchased raw hides and skins and paid a tax of Rs. 76,927 on these under the provisions of the Andhra pradesh General Sales Tax Act, 1957 (hereinafter referred to as "the State Act"). Subsequently, after process of tanning he sold the resultant tanned hides and skins in the course of inter-State trade and also paid tax due under the Central Sales Tax Act, 1956 (hereinafter referred to as "the Central Act") on their inter-State sales turnover. Thereafter, he applied for refund of the amount paid under the State Act in view of the provisions of section 15(b) of the Central Act read with sections 6 and 38

of the State Act and rule 27-A of the Rules framed under the State Act. The assessing authority and the Deputy Commissioner held that tanned hides and skins which were sold in the course of inter-State trade were a different commodity from the raw hides and skins and, therefore, the assessee was not entitled to any relief. They relied upon the decisions of the Madras High Court reported in Gordon Woodroffe & Company (Madras) P. Ltd. v. State of Tamil Nadu [1977] 40 STC 130 and K. A. K. Anwar and Company v. State of Tamil Nadu [1984] 56 STC 58 and distinguished the decision of our High Court in State of Andhra Pradesh v. Associated Tanners [1975] 36 STC 32 as well as the decision in T.R.C. No. 11 of 1969 dated February 10, 1971. The Tribunal has allowed the appeal.

3. The Seventh Schedule read with article 246 of the Constitution of India contains the following entries :

"List II - State List - Entry 54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I."

Union List - List I under the same Schedule contains the following entry 92A :

"92A. Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce."

It is also necessary to refer to the relevant provisions of article 286 of the Constitution of India :

"286. Restrictions as to imposition of tax on the sale or purchase of goods. - (1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place -

(a) outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1).

...............".

The Parliament has enacted the Central Sales Tax Act, 1956 (Central Act 74 of 1956), formulating the principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce or outside a State or in the course of import into or export from India, to provide for the levy, collection and distribution of taxes on sales of goods in the course of inter-State trade or commerce and to declare certain goods to be of special important in inter-State trade or commerce and specify the restrictions and conditions to which State laws imposing taxes on the sale or purchase of such goods of special important shall be subject to.

4. The levy of sales tax on inter-State sales can be only under the Central Act.

Further, in respect of declared goods mentioned in section 14 of the Central Act, the power of State is to be subject to the provisions of Central Act. Section 14 of the Central Act contains a list of goods declared by Parliament as of special important in inter-State trade or commerce. We are concerned with entry "(iii) hides and skins, whether in a raw or dressed state". The relevant portion of section 15 of the Central Act is as follows :

"15. Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State. - Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely :

(a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed four 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, and tax has been paid under this Act in respect of the sale of such goods in the course of inter-State trade or commerce, the tax levied under such law shall be reimbursed to the person making such sale in the course of inter-State trade or commerce in such manner and subject to such conditions as may be provided in any law in force in that State;

(c) ....

(d) ...."

The Andhra Pradesh General Sales Tax Act, 1957, i.e., the State Act, provides for levy of sales tax on declared goods by section 6 read with the Third Schedule and provides for compliance with the conditions in section 15 of the Central Act. The relevant provisions of the State Act, i.e., sections 6 and 38 read as follows :

"6. Tax in respect of declared goods. - Notwithstanding anything contained in section 5, the sale or purchases of declared goods by a dealer shall be liable to tax at the rate, only at the point of sale or purchase specified against each in the Third Schedule on his turnover of such sales or purchases for each year irrespective of the quantum of his turnover in such goods; and the tax shall be assessed, levied and collected in such manner as may be prescribed :

Provided that where any such goods on which a tax has been so levied are sold in the course of inter-State trade or commerce, and tax has been paid under the Central Sales Tax Act, 1956, in respect of the sale of such goods in the course of inter-State trade or commerce the tax so levied shall be reimbursed to the person making such sale in the course of inter-State trade or commerce in such manner and subject to such conditions as may be prescribed."

Entry 9 in the Third Schedule reads as follows :

-- "S. No.

Description of goods Policy of levy Rate of tax -- 9. Hides and skins (3009) (a) Untanned hides When purchased by a 4 paise in and skins tanner in the State the rupee. at the point of purchase by the tanner and in all other cases at the point of purchase by the last dealer who buys them in the State. (b) Tanned hides and When purchased by 4 paise in skins (which were a manufacturer in the rupee." not subjected to the State at the tax as untanned point of purchase hides and skins). by the manufacturer and in all other cases at the point of purchase by the last dealer who buys them in the State. -- "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."

It is not in controversy that the goods covered by entry - hides and skins - whether in a raw or dressed state in section 14 of the Central Act are included in entry 9 of the Third Schedule of the State Act. The State Act has treated untanned hides and skins as a commodity distinct from tanned hides and skins and this will apply for levy of State sales tax. A perusal of the various items of declared goods in section 14 of the Central Act shows that the Parliament was conscious of declared goods in one entry could be more than one commercial commodity. In respect of item (iii) the language extracted above, i.e., hides and skins whether in a raw or dressed state indicates that this is treated as one commodity for the Central Act. The controversy in this is about relief claimed on the sales of declared goods, i.e., one commodity being sold and also subjected to Central sales tax during inter-State sales. It does not matter whether they are one or could be treated as different commodities by State laws.

5. u/s 15 the two-fold restrictions are : that tax leviable under State sales tax law shall not exceed the percentage mentioned in it on declared goods and if the same declared goods are subsequently subject-matter of inter-State sale and tax is paid on such transactions under the Central Act, the dealer will be entitled to a refund of tax paid under the State law. These restrictions have been adopted by the State Legislature in enacting section 6 referred to above. In respect of declared goods as described in section 14 of the Central Act the State sales tax

cannot exceed the limits laid down by section 15(a) of the Central Act in respect of rates of tax. State law will also have to comply with the requirement of section 15(b) regarding refund and for this purpose the description of declared goods in section 14 will prevail over any classification made among the said declared goods by State Act for the purpose of levy of State tax. The question of levy of sales tax on hides and skins has come up for consideration before our High Court on more than one occasion. This earliest case was T.R.C. No. 11 of 1969 dated February 10, 1971, where the controversy was similar as in this case which is evident from the relevant portion which is extracted in a subsequent decision reported in The State of Andhra Pradesh Vs. The Associated Tanners, . It reads thus :

"We are unable to agree with the construction put upon by the Government Pleader for the reason that item (iii) of section 14 does not classify hides and skins into two classes, as both tanned and untanned hides and skins are included in this item. Section 15 which enjoins upon the State to refund does not make any such distinction between raw hides and tanned hides. All that is required is if hides and skins whether in raw condition or dressed state suffered tax under the State law and if such goods are sold in the course of inter-State trade or commerce, then the tax so levied on the goods shall be subject to refund in the manner provided subject to such conditions as may be imposed by the State. Though the State Act classifies hides and skins into two categories, raw and tanned, the Central Act does not make any such distinction as the goods, hides and skins, whether in raw or dressed state, are of special importance in inter-State trade and commerce. It is with a view to promote inter-State trade and commerce that this benefit is sought to be given to one who has paid tax under the State law in respect of hides and skins, whether they were exported in raw state or exported after they were tanned or dressed ....

If the State, as may be seen from item 9 of Schedule III, has classified hides and skin into two categories, (a) raw hides and skins and (b) tanned hides and skins, it is for the purpose of collection of tax under the State law, and that classification has no relevancy when a dealer asks for relief invoking the provisions of sections 14 and 15 of the Central Sales Tax Act read with the proviso to section 6 of the A.P.G.S.T. Act."

In the case reported in State of Andhra Pradesh v. Associated Tanners [1975] 36 STC 32 (AP), the controversy was whether the inter-State sale of tanned hides and skins was exempt from levy of Central sales tax after the raw hides and skins have suffered tax under the State law in view of section 8(2A) of the Central Act. This contention was negatived but the court observed that, in view of the earlier decision in T.R.C. No. 11 of 1969 the remedy of the assessee was to seek refund of the State sales tax in such circumstances.

6. The next case of our High Court is reported in The State of Andhra Pradesh Vs. Mohd. Basheer and Company, . The controversy in that case arose because of the treatment of raw hides and skins and tanned hides and skins under the State

law as two different commodities in connection with the grant of exemption u/s 5(3) of the State Act where the said declared goods are meant for export. After examining the aforesaid provisions and several cases cited, it was held that, entry 9 in the Third Schedule of the State Act provides for a method of alternative taxation of hides and skins and not simultaneous taxation even though they are treated as different commodities. That decision indicates that a review of the decision yielded the following principles : (1) merely because any particular goods are treated as different commodity by the State Act, it does not necessarily follow that they should be so treated for the purpose of Central Sales Tax Act. (2) For determining the applicability of the provisions of the Central Sales Tax Act the description of the goods in section 14 is relevant.

7. The decision of the Madras High Court reported in Gordon Woodroffe & Co. (Madras) P. Ltd. v. State of Tamil Nadu [1977] 40 STC 130 dealt with a controversy about the applicability of Government Order granting exemption from sales tax on goods which had suffered tax under the State law. In that connection it is observed that the State law treated raw hides and skins and dressed hides and skins differently and they were different commodities. In this view it held that the benefit of the Government Order is not available to the dealer in that case. The question about the description of the declared goods in section 14 and the effect of any inconsistency between the description in section 14 of the Central Act and the description in the State Act and the effect of section 15 of the Central Act did not arise and was not considered. As the relief of refund is based on the provisions of section 15(b) of the Central Act, as a condition for the imposition of sales tax by the States in respect of the declared goods mentioned in section 14 of the Central Act the description of declared goods in the Central Act will apply irrespective of the fact whether those goods could be treated as different commodities under the State sales tax law and may even be different commodities. The earlier decisions of our High Court referred to above have also taken a similar view. We, therefore, do not find any merit in this revision and it is, accordingly, dismissed.

8. Petition allowed.