
(1968) 03 AP CK 0003

In the Andhra Pradesh High Court

Case No : Tax Revision Case No"s. 52 of 1964 and 7 of 1965

State of Andhra Pradesh

APPELLANT

Vs

G. Muralidhar and Co.

RESPONDENT

Date of Decision : 18-03-1968

Acts Referred:

Central Sales Tax Act, 1956 — Section 3, 6, 8, 9

Citation : (1968) 22 STC 285

Hon'ble Judges : Sambasiva Rao, J;Basi Reddy, J

Bench : Division Bench

Advocate : The Principal Government Pleader, for the Appellant; A.V.S. Ramakrishniah, for the Respondent

Final Decision : Allowed

Judgement

Sambasiva Rao, J.—These two tax revision cases raise an identical question and, therefore, they can be conveniently decided under a common order. The State of Andhra Pradesh is the petitioner. The question that is posed for decision in the cases is whether the Andhra Pradesh State is competent to levy and collect sales tax from the respondents. The answer to that question depends upon the interpretation of the proviso to Sub-section (1) of Section 9 of the Central Sales Tax Act (hereinafter referred to as the Central Act).

2. It is convenient to note at this stage the relevant facts of both the cases. The respondents are dealers in grains and also commission agents." During the year 1958-59 they purchased railway receipts relating to consignments of bajra and jawari from non-resident dealers. The first sellers happened to be in Mysore State. They booked the goods to places outside Mysore State and when the goods were in movement, they sold the railway receipts to the respondents, who in their turn sold them to buyers in Rajasthan etc. The respondents in T.R.C. No. 52 of 1964 purchased the documents relating to three consignments, the total of which is Rs. 24,497. The respondents in T.R.C. No. 7 of 1965 purchased documents in respect of two items, the total of which comes to Rs. 80,124.58.

The respondents, however, failed to obtain and produce "C" declaration forms for these transactions. So, these turnovers were assessed by the State of Andhra Pradesh (petitioner) on behalf of the Union Government to a tax at 7 per cent, under the Central Act. Thereupon the respondents preferred appeals to the Assistant Commissioner (C.T.), Hyderabad (South), who dismissed the appeals. The respondents carried the matters further in second appeals to the Sales Tax Appellate Tribunal. While the respondents in T.R.C. No. 52 of 1964 pressed their appeal before the Tribunal in regard to the entire turnover of Rs. 24,497 the respondents in T.R.C. No. 7 of 1965 did not press their appeal on a turnover of Rs. 15,750.53 and restricted it only to a turnover of Rs. 64,374.05. The Tribunal allowed the appeals to the extent they were pressed, holding that the State of Andhra Pradesh had no competence to levy and collect the tax from the respondents on these transactions. The State of Andhra Pradesh has, therefore, preferred these revision cases. The turnover disputed in T.R.C. No. 52 of 1964 is Rs. 24,497 and the tax involved is Rs. 1,714.79 while the disputed turnover in T.R.C. No. 7 of 1965 is Rs. 64,794.05 and the amount of tax involved in it is Rs. 1/1-98.02.

3. The facts of the case are not in dispute. Briefly restated they are as follows: The first sellers of the consignments belonged to the Mysore State. They booked the consignments to places outside the Mysore State and when the goods were in movement, they sold the railway receipts to the respondents. Having purchased them from the first sellers of Mysore State, the respondents in their turn sold the railway receipts to buyers in Rajasthan, West Bengal etc. The respondents are registered dealers under the Central Act, in the State of Andhra Pradesh, and they have to obtain the C Forms from the appropriate assessing authority as required by Clause (a) of Sub-section (4) of Section 8 of the Central Act in connection with the purchase of goods. It is common case that such forms have to be obtained by the respondents from the Andhra Pradesh State.

4. In the light of these admitted facts it is contended for the petitioner (State of Andhra Pradesh) that the proviso to Section 9(1) of the Central Act is clearly attracted to these cases and that, therefore, the petitioner was competent to levy and collect the tax from the respondents, on these transactions. It is, therefore, necessary to examine the provisions of Section 9(1) of the Central Act, with the proviso. They are in the following terms :

The tax payable by any dealer under this Act on sales of goods effected by him in the course of inter-State trade or commerce (whether such sales fall within Clause (a) or Clause (b) of Section 3) shall be levied and collected by the Government of India in the manner provided in Sub-section (3) in the State from which the movement of the good commenced :

Provided that, in the case of a sale of goods during their movement from one State to another being a sale subsequent to the first sale in respect of the same goods, the tax shall, where such sale does not fall within Sub-section (2) of Section 6, be levied and collected in the State from which the registered dealer

effecting the subsequent sale obtained the form prescribed for the purposes of Clause (a) of Sub-section (4) of Section 8 in connection with the purchase of such goods.

5. The other provisions of Section 9 are not" relevant for the present discussion. It is sufficient to note, that by virtue of Sub-section (3) of Section 9, the authorities who are empowered to assess and collect tax under the State sales tax law are empowered to assess and collect the tax under the Central Act also, on behalf of the Government of India. In order to test the contention put forward on behalf of the petitioner, it should be examined whether all the ingredients and requirements of the proviso are satisfied in the present cases.

6. It is obvious that there was movement of goods from one State to another. The sale of the documents of title in favour of the respondents was clearly subsequent to the first sale in respect of some goods which had taken place in the Mysore State. There is thus a subsequent sale of the same goods.

7. The next requirement of the proviso is that such sale should not fall within Sub-section (2) of Section 6 of the Central Act. There is no dispute that the present sales are not covered by Section 6(2). That is clearly admitted by the respondents.

8. Next the tax on such sales of goods is to be levied and collected in the State from which the registered dealer effecting the subsequent sale obtained the form prescribed for purposes of Clause (a) of Sub-section (4) of Section 8 of the Central Act. It is very frankly admitted by the learned counsel for the respondents that the State of Andhra Pradesh is the appropriate State from which such forms are to be obtained for these transactions. It is thus clear that all the requirements of the proviso are fully satisfied in these cases and that it is the State of Andhra Pradesh, that is the appropriate State that can levy and collect the tax under the Central Act. The learned counsel for the respondent has frankly stated that it is so. When that is so, there is no doubt that the State of Andhra Pradesh has the competence to levy and collect the tax under the proviso to Section 9(1).

9. It is obvious that the Sales Tax Appellate Tribunal has misdirected itself and not correctly understood the scope of the proviso. It observed

In the instant case the appellants sold the goods to a dealer in West Bengal and Rajasthan. Therefore, if any form prescribed had been obtained by him it would be from the dealer in the States of West Bengal and Rajasthan and in the light of the proviso, it is that State that is authorised to levy and collect the tax under the Central Sales Tax Act on behalf of the Government of India.

10. In understanding the proviso and its application to the facts of the present case, the Tribunal has clearly erred. It has not understood correctly the significance of the clause "in connection with the purchase of such goods" occurring in the proviso to Section 9. The respondents could obtain C Forms from

the West Bengal or Rajasthan buyers, only in connection with their sales. They could not have obtained the forms from those States in connection with their purchases. It is an admitted fact, as stated already, that the respondents could obtain the C Forms from the Andhra Pradesh State alone, in connection with the purchase of the goods. It is, therefore, beyond doubt that the Tribunal is wrong and that it is the State of Andhra Pradesh that is empowered to assess and collect the tax from the respondents in respect of these transactions.

11. This view of ours finds support from the decision of a Division Bench of the Madras High Court in *K.A. Ramudu Chettiar and Company Vs. The State of Madras*. It was also a case where an assessee purchased certain goods from certain registered dealers in Rajasthan, where the goods are exempt from sales tax, and the goods were despatched by rail and during their transit the assessee transferred the documents of title to certain purchasers (who were also registered dealers) in the Madras State. The Division Bench held that-

The entire turnover will fall within the ambit of Section 9(1) of the Central Sales Tax Act and the Madras State will be entitled to tax the subsequent sale. If the resale or subsequent sale does not fall within the ambit of Section 6(2) they will attract the proviso to Section 9(1) of the Act. Hence the State which can tax the transaction is the State from which the assessee who effected the subsequent sale obtained the declaration in Form C.

12. There is, therefore, no doubt that the present transactions come within the ambit of the proviso to Section 9(1) and that the Tribunal is wrong. We, therefore, set aside the decision of the Sales Tax Appellate Tribunal and remit back the cases to the Tribunal for fresh consideration in accordance with law.

13. While frankly conceding this position as correct, Sri Ramakrishniah the learned counsel for the respondents relies upon the decision of the Supreme Court in *The State of Mysore v. Yaddalam Lakshminarasimhiah Setty and Sons* [1965] 16 S.T.C. 231, to contend, that the transactions are not taxable at the sale point under the State sales tax law and for that reason they are not taxable under the Central Act. This, however, is a new point which he seeks to raise in the revision. It was not raised either before the Tribunal, or before any other lower authority. In the view we have taken, we do not propose to express any opinion on this question. The respondents may raise this contention if they so want before the Tribunal and the Tribunal will consider this contention also, if raised before it.

14. The Sales Tax Appellate Tribunal will corner all aspects of the matter and decide the cases in accordance with law. The two tax revision cases are, therefore, allowed. In the circumstances of the cases we make no order as to costs in these tax revision cases.