
(1988) 06 AP CK 0010
In the Andhra Pradesh High Court
Case No : T.R.C. No. 29 of 1985

State of Andhra Pradesh	Vs	APPELLANT
International Packaging Industry		RESPONDENT

Date of Decision : 16-06-1988

Acts Referred:

Central Sales Tax Act, 1956 — Section 5, 5(3)

Citation : (1989) 74 STC 216

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

Bench : Division Bench

Advocate : Government Pleader for Commercial Taxes, for the Appellant; S. Dasaratharama Reddi, for the Respondent

Judgement

1. The only point in this revision filed by the State is, whether the respondent is entitled to the exemption from tax u/s 5 of the Central Sales Tax Act, 1956, the sales effected by it being "sales in the course of export".

2. The brief facts of the case are as follows : The respondent is a manufacture of hessian/gunny bags. It made sales of the gunny bags to (i) M/s. Tiffin Barytes Asbestos and Paints Ltd., (ii) M/s. Vijayalakshmi Minerals Trading Company and (iii) A.P. Mining Corporation Limited (hereinafter referred to as "the dealers"). The gunny bags purchased were used by the dealers for purpose of packing the barytes powder being exported to a foreign buyer. As per the policy of the Central Government the barytes packed in the hessian gunny bags were sold to and channelised through the Minerals and Metals Trading Corporation for purpose of exporting the same to the foreign buyer. The claim of the respondent is that the sales effected by it were in the course of export being the last sale preceding the sale occasioning the export of barytes packed in the goods sold out of the territory of India. The assessing authority rejected the claim and subjected the sales of tax. The respondent thereupon made an unsuccessful appeal before the Appellate Deputy Commissioner. Thereafter, it moved the Sales Tax Appellate Tribunal. The Tribunal upheld the claim of the respondent and found the sales to

be covered by section 5(3) of the Central Sales Tax Act. Hence this revision by the State.

3. Before entering into the appreciation of facts, it is useful to notice section 5(3) of the Central Sales Tax, under which the benefit of exemption is claimed. It is as under :

"Section 5. When is a sale or purchase of goods said to take place in the course of import or export. - (1)

(2)

(3) Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export."

4. Sub-section (3) of section 5 was inserted by Act 103 of 1976. Prior to this insertion only such sales occasioning the export out of the territory of India were said to have taken place in the course of export. By virtue of sub-section (3) even the preceding sale occasioning the export is one in the course of export. Thus, not only ultimate but also penultimate sales occasioning the export to a foreign buyer are sales in the course of export falling within the ambit of section 5 to invoke the benefit of exemption from exigibility of tax.

5. Mr. Venkataramana, the learned Government Pleader, contended that the sales of gunny bags by the respondent were neither ultimate nor penultimate occasioning the export of the same and therefore the said sales are not in the course of export for being covered by section 5 of the Central Sales Act. On the other hand, Mr. Dasaratharama Reddi, the learned counsel for the respondent, submitted that the MMTC (Minerals and Metals Trading Corporation) is a mere agent of the dealers to whom the respondent sold the gunny bags, that the dealers alone are the exporters to the foreign buyer and therefore the sales by the respondent to the dealers are penultimate ones and accordingly fall under the coverage of section 5(3). The learned counsel further submitted that the dealers to whom the respondent sold the gunny bags have themselves entered into negotiations with the foreign buyer and settled the terms and conditions, that the dealers alone took all necessary steps in regard to the customs duty for shipment, etc., and therefore the dealers are exporters and their sales to the foreign buyer are ultimate ones thereby rendering the sales effected by the respondent to the dealers penultimate occasioning the export.

6. The Supreme Court in *Serajuddin and Others Vs. The State of Orissa*, had occasion to deal with arguments similar to the present ones. Before the Supreme Court the goods were exported through the State Trading Corporation. Majority of the Honourable Judges held the privity of contract was between the

corporation and the foreign buyer, that it is this contract that occasioned the sale and not the one between the appellants and the corporation before the Supreme Court. Equally is the case in the instant matter. It is only the contract between the MMTC and the foreign buyer that occasioned the export. Accordingly, it is the sale by the MMTC to the foreign buyer that is the ultimate one while the sale by the dealers to the MMTC is the penultimate one. Consequently the sales effected by the respondent to the dealers are not penultimate so as to constitute sales in the course of export contemplated by section 5. Turning to the question of principle and agent, it observed that the system of canalisation of exports through certain corporate bodies is held to be constitutionally valid in *Daruka and Co. Vs. The Union of India (UOI) and Others*, , and that agency arises by an ostensible authority conferred by the principal on the agent or by an implication of law in cases of necessity. In the present case, admittedly, there is no authority conferred by the dealers on the MMTC in regard to the transaction with the foreign buyer. Even to hold that there is an agency of necessity, there should have been a contractual relationship created by the parties and on account of some emergency the law should have conferred upon one party authority to act for another or allowed an agent to exceed the authority conferred by the contract. This is not the case of the respondent except that the MMTC is a special agency to carry out certain public purpose. Therefore, we are unable to accept the contention that the MMTC is an agent of the dealers.

7. It would be interesting to notice here that the Supreme Court as noted has held that the corporation is neither an agent nor the sales to it by the vendors are ultimate so as to constitute "sales in the course of export" for purpose of invoking the benefit u/s 5 of the Central Sales Tax Act. This has rendered the benefit of section 5 not being available to others than certain specified bodies through whom alone the exports can be channelised as a policy of the Central Government. It is this situation obviously that seems to have prompted the legislature to bring in sub- section (3) by Act 103 of 1976 so that not only the ultimate sales but also the penultimate ones would constitute "sales in the course of export" so as to entitle even the vendors (dealers) to the corporate bodies and specified others through whom alone the exports can be canalised, to have the benefit of section 5.

8. Mr. Dasaratharama Reddi sought to contend that the dealers alone are the exporters and that the property in the goods sold to the foreign buyer would pass on only after delivery of the shipping documents and that too after the goods have crossed the customs frontiers. In this regard, he placed reliance upon the decisions of the Madras High Court in *State of Tamil Nadu v. Mohd. Yousuff Sahib & Co.* [1978] 42 STC 335, *Deputy Commissioner of Commercial Taxes v. Thirumeninatha Nadar Firm* [1968] 21 STC 184 and *Haji Abdul Gaffoor Sahib & Co. v. State of Madras* [1958] 9 STC 208. There is absolutely no dispute with the proposition that in cases of sales effected by transfer of documents of title to the goods, the mere shipping of the goods, after the goods had gone through the "customs barriers", would not constitute the goods having crossed

the "customs frontiers" and that it is only after the goods have crossed the frontiers the title to the property passes on. These decisions are of no help to the respondent for the reason that admittedly the dealers had sold the barytes powder packed in the gunnies sold by the respondent to the MMTC for being exported to the foreign buyer.

9. In the result, we hold that the sales effected by the respondent to the dealers are neither ultimate nor penultimate ones so as to constitute "sales in the course of export" for purpose of enabling the respondent to lay a claim invoking the benefit of section 5 of the Central Sales Tax Act. The revision is accordingly allowed and the order of Sales Tax Appellate Tribunal is set aside. No costs. Advocate's fee Rs. 150.

10. Petition allowed.