(2006) 08 AP CK 0002

In the Andhra Pradesh High Court

Case No : Tax Revision Cases No''s. 10, 11, 12, 13, 15, 16, 17 and 18 of 2000

State of Andhra Pradesh APPELLANT

Vs

Jairaj Ispath Limited and Others RESPONDENT

Date of Decision : 25-08-2006

Acts Referred:
Andhra Pradesh General Sales Tax Act, 1957 — Section 12, 6, 9(1)

Citation : (2007) 6 VST 661

Hon'ble Judges : G. Chandraiah, J;Bilal Nazki, J

Bench : Division Bench

Advocate : K. Raji Reddy, for Commercial Taxes, for the Appellant; S.R. Ashok, for S. Dwarakanath, for the Respondent

Final Decision : Allowed

Judgement

Bilal Nazki, J.—All these revisions raise same questions of law and fact and therefore, they are being disposed of together by this common judgment. For facts, we are taking up the matter pertaining to T.R.C. No. 10 of 2000.

2. The assessees are manufacturers and sellers of M.S. ingots. They were assessed by the Commercial Tax Officer for different assessment years. The assessees claimed that they were entitled to an exemption of sales tax on ingots as the ingots were manufactured by using iron scrap as raw material which had already suffered tax. This contention was not accepted by the Tribunal. In the alternative, the assessees had contended that they were entitled to set-off in terms of G.O. Ms. No. 1194 Revenue (S) Dept, dated July 17,1984 and G.O. Ms. No. 774, Revenue (S) Dept., dated July 9, 1985 with respect to the tax paid on scrap while purchasing it. This contention was accepted by the Tribunal and therefore, these revisions.

3. G.O. Ms. No. 1194, dated July 17, 1984 lays down:

Exemption of tax on sales of scrap made to mini-steel plants-cum-rerollers:

Notification. - In exercise of the powers conferred by Sub-section (1) of Section 9 of the Andhra Pradesh General Sales Tax Act, 1957 (Andhra Pradesh Act VI of 1957) and in supersession of the Notification I issued with G.O.Ms. No. 498 Revenue dated March 20,1984 and published at page 1 of Part I, Extraordinary, of the Andhra Pradesh Gazette dated the 21st of March, 1984, the Governor of Andhra Pradesh hereby exempts from the tax payable under the said Act with effect from the 1st April, 1984, the sales of iron and steel scrap referred to in item 2 of the Third Schedule to the said Act, made by the dealers to the mini-steel plant-cum-rerollers situated within the State of Andhra Pradesh for the purpose of manufacture of steel ingots or billets or rerolled finished products within the State subject to the condition that if the turnover claimed by the dealer to be comprising the sales of iron and steel scrap to the mini-steel plants and mini-steel plants-cum-rerollers situated within the State covered by the declaration mentioned below issued to the effect that it has purchased the scrap for the purpose of manufacture of ingots/billets or re-rolled finished products within the State.

FORM OF DECLARATION Date:.... Serial No....

1. Name and address of the mini-steel plant/ mini-steel plant-cum-rerollers:

2. No. of registration certificate u/s 12 of the Andhra Pradesh General Sales Tax Act, 1957 and the authority by whom issued:

3. Name and address of the selling dealer from whom the mini steel plant or the mini-steel plant-cum-reroller purchased the scrap: (a) Invoice No. and date (b) Description of the scrap: (c) Quantity set out in the bill: (d) Amount set out in the bill: I, hereby declare that the purchase of the above scrap is for the purpose of manufacture of ingots/billets of rerolled products in our mini-steel plant/mini-steel-plant-cum-rerolling unit situated in side the State.

Signature of the declarant Status and relationship to the dealer

Note : This G.O. applies only to mini-steel plants and re-rollers.

4. A bare perusal of this G. O. shows that there was tax exemption on the sale of iron and steel scrap referred to in item 2 of the Third Schedule to the Act, made by dealers to the mini steel plants-cum-rerollers situated within the State of Andhra Pradesh for the purpose of manufacture of steel ingots or billets or re-rolled finished products within the State. So, what was exempted was sale of iron and steel scrap made by dealers to the mini-steel plants-cum-re-rollers situated within the State of Andhra Pradesh. This G.O. was issued on July 17, 1984 and another G.O. was issued on July 9, 1985 being G.O. Ms. No. 774, Revenue (S) Department. It lays down:

Set-off of tax paid on ingots or billets or rerollable scrap. In exercise of the powers conferred by Sub-section (1) of Section 9 of the Andhra Pradesh General Sales Tax Act, 1957 (Andhra Pradesh Act VI of 1957), the Governor of Andhra Pradesh hereby directs that where a tax has been levied and collected under the said Act in respect of the sale or purchase inside the State of steel ingots or billets or rerollable scrap referred to in item 2 of the Third Schedule to the said Act, the tax leviable u/s 6 of the said Act on the rerolled finished products manufactured within the State from out of such ingots or billets or rerollable scrap by the steel rerollers and mini-steel plants-cum-rerollers (in case of purchase of ingots, billets and rerollable scrap by them in the State) situated within the State of Andhra Pradesh and sold inside the State shall be reduced by the amount of tax levied and collected on such ingots, billets and rerollable scrap with effect from the 1st April, 1985.

5. A perusal of this G.O. would show that where tax was collected on scrap, it would be reduced on the finished product. Therefore, the contention of the assessees was that in the first instance, they were exempt under G.O. Ms. No. 1194 on the first sale, but in any case if it had been paid, they were entitled to a set-off.

6. The contention of the Revenue on the other hand was that in terms of G.O. Ms. No. 1194, a declaration, which forms part of the G.O., had to be made by the dealer, at the time of first sale of the scrap. If no such declaration was made, G. O. Ms. No. 774 would not apply.

7. The learned Counsel for the assessees, however, relied on a judgment of this Court in Arun Ispat Udyog Vs. State of A.P., . This judgment was altogether on a different factual matrix. There is nothing on record to show that when dealers purchased the scrap, tax was paid, and as a matter of fact, it is nowhere contended that any declaration was given in terms of G.O. Ms. No. 1194. The form of declaration attached to G.O. Ms. No. 1194 lays down that the name and address of the selling dealer from whom the mini steel plant or the mini-steel plant-cum-reroller purchased the scrap. It has to give particulars like invoice number and date, description of the scrap, quantity set out in the bill and amounts set out in the bill. G.O. Ms. No. 774 would not apply at all because its application depends on the fact that the tax had been paid by the dealer, who had manufactured the finished goods. We do not agree with the Tribunal''s reasoning that whether there was a declaration or no declaration, the benefit of G.O. Ms. No. 1194 would be available. Since there was no factual basis laid down that tax had been paid by the first dealer when the scrap was purchased, the assessee could not claim any benefits under G.O. Ms. No. 774.

8. For these reasons, we allow the revisions and set aside the order of the Tribunal.

