(1996) 07 AP CK 0065

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 30 of 1989

State of Andhra Pradesh APPELLANT

Vs

Manohara Trading Company RESPONDENT

Date of Decision : 11-07-1996

Acts Referred:

Citation : (1997) 106 STC 304

Hon'ble Judges : S.S. Mohammed Quadri, J;B. Sudershan Reddy, J

Bench : Division Bench

Judgement

1. Dissatisfied with the order passed by the Sales Tax Appellate Tribunal in T.A. No. 343 of 1984 the State has come up in revision.

2. The respondent-assessee was granted exemption on the ground of second sales, while passing the order of assessment under the Andhra Pradesh General Sales Tax Act, 1957 (for short, "the AGPST Act"), for the assessment year 1981-82. However, the assessing authority in exercise of power u/s 14(4)(cc) of the APGST Act withdrew the exemption on the ground that the first seller - M/s. Sri Veera Venkata Satyanarayana Rice and Oil Merchants, Narasaraopet - from whom the assessee claimed to have made the first purchase, ceased to be a registered dealer on the date of purchase. That order of the assessing authority was confirmed by the Appellate Deputy Commissioner, in appeal, on December 16, 1983. On further appeal by the respondent-assessee before the Sales Tax Appellate Tribunal, the appeal was allowed. Hence, the State is in revision before us.

3. The learned Special Government Pleader appearing for the Revenue, vehemently contends that as the registration certificate of the dealer has been cancelled, the dealer became unidentifiable and, therefore, the exemption was rightly withdrawn. We are afraid, we cannot accede to the contention of the learned Government Pleader. Merely because the registration of a dealer was cancelled, it cannot be said that the dealer has become unidentifiable.

4. The learned Government Pleader, however, relied upon the judgment of a Division Bench of this Court in The State of Andhra Pradesh Vs. Thungabhadra Industries Ltd., .In that case speaking for the Bench the honourable the Chief Justice Sri K. Madhava Reddy (as he then was) observed that the first seller should be real and identifiable. In that case, the revising authority had withdrawn the exemption on the ground that the purchases were fictitious and the alleged first sales were not subjected to tax. It may be pointed out here that in the said case where purchases were found to have been made by the assessee from other dealers whose registration numbers were mentioned by the revising authority, but the exemption was withdrawn by him for want of registration records, the Tribunal, on appeal, came to the conclusion that the vendors of the assessee were real and identifiable dealers and granted exemption; in regard to the dealers who were found to be not identifiable and the first sales were found to be fictitious by the Tribunal, the Tribunal itself disallowed the exemption claimed by the assessee. On those finding the High Court dismissed the revision against both the orders. Thus, it follows that where the assessee has furnished the registration numbers of the dealers from whom he claims to have purchased the goods, the exemption granted on the basis of second sales of such goods cannot be withdrawn on the ground of cancellation of registration certificates if the vendors are real and identifiable persons. By mere cancellation of the registration certificates the dealers do not cease to be identifiable unless the cancellation itself is on the ground that they are fictitious and unidentifiable.

5. The next case relied upon by the learned Government Pleader is Dwaraka Pershad Badari Pershad v. State of Andhra Pradesh [1992] 87 STC 177 (AP). In that case, the question before the Division Bench of this Court (of which one of us - Justice Syed Shah Mohammed Quadri, was a party) was that the dealers from whom the petitioner-assessee claimed to have purchased, had given certain registration numbers, but they were found to be fictitious dealers, whose names and addresses did not exist. The Division Bench held that mere registration of certain names as dealers with the department would not ipso facto entitle the petitioner to claim exemption, if eventually the said dealers are found to be fictitious and non-existent. This is not the position here. Therefore, this judgment does not help the petitioner.

6. It may be observed that the ground that a dealer is fictitious is entirely different from the ground of a dealer being unregistered. Merely because a dealer has ceased to be a registered dealer, it does not follow that it ceased to be an existing person. Fictitious dealers or non-existing dealers, whose names are shown on the paper as registered, cannot be given any credence due to their registration numbers. But if a dealer is a real and identifiable dealer, the mere fact that his registration has been cancelled would not make him a non-existent dealer.

7. The learned Government Pleader, however, contends that to claim exemption, the burden is on the respondent-assessee to show that indeed purchases are

made. First of all, this point was not urged before the Tribunal. But even otherwise, having regard to the finding of the Tribunal that it was not the case of the department that the bills were not issued by M/s. Sri Veera Venkata Satyanarayana Rice and Oil Merchants, Narasaraopet and that the respondent-assessee filed purchase invoices as well as way bills to show that it made purchases and the goods had in fact moved by rode from Narasaraopet to Nandyal and the way bills were checked at the Commercial Tax Department check-posts on the way, we hold that the appellant had discharged the burden that the goods were purchased by it from a dealer who was identifiable.

8. For the above reasons, we find no merit in the tax revision case and it is accordingly dismissed. No costs.

9. Petition dismissed.

