(2008) 07 AP CK 0128

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 69 of 1998

State of Andhra Pradesh APPELLANT

Vs

Prakash Arts RESPONDENT

Date of Decision : 14-07-2008

Acts Referred:
Andhra Pradesh General Sales Tax Act, 1957 — Section 22(1), 5E

Citation : (2008) 18 VST 39

Hon'ble Judges : C.Y. Somayajulu, J;B. Prakash Rao, J

Bench : Division Bench

Advocate : Government Pleader for Commercial Taxes, for the Appellant; Girish Kumar, for the Respondent

Final Decision : Dismissed

Judgement

B. Prakash Rao, J.—The State filed this revision u/s 22(1) of the Andhra Pradesh General Sales Tax Act assailing the correctness of the judgment in T.A. No. 526 of 1996 dated November 4, 1996 on the file of the Sales Tax Appellate Tribunal, A.P., at Hyderabad.

2. Few facts necessary for disposal of this revision are that the respondent herein is sought to be levied with sales tax for disputed turnover which pertains to the business as a dealer in leasing out the advertisement boards. The respondent claims that the gross turnover of Rs. 1,57,84,590 for the year 1992-93 and Rs. 1,94,10,990 for the year 1993-94 was claimed as exemption on the ground that at various places leases of landed property were taken and the customer is paying the hire charges on such boards, that the municipality has erected the hoardings and the said hoardings are being let out by the dealer to various parties for a consideration. Initially, the Commercial Tax Officer held that there was no sale of goods as the boards/hoardings are permanently fixed to earth and it constitutes immovable property and it does not come within the parameters of Section 5E of the said Act and granted exemption. Later, the business premises of the dealer were inspected on December 22, 1995 and various documents like

copies of the orders placed by the advertisers, bills, etc., were examined, whereupon the Deputy Commissioner issued notices proposing to revise the assessments for both the years, i.e., 1992-93 and 1993-94 and ultimately held that the said turnover should be subjected to tax and accordingly levied the same. Challenging the same, the respondents herein filed revision reiterating the self-same contentions that it amounts to immovable property and therefore the question of levy does not arise. On consideration of various submissions made, the point involved is as to whether in these transactions covered by the turnover, there is any transfer of goods as contended or any lease of immovable property or display of advertisements, etc. The Tribunal passed a detailed and reasoned order holding that it amounts to immovable property and therefore not liable for tax. Hence this revision.

The learned Government Pleader for Commercial Taxes sought to contend that having regard to the nature of transaction and the hoardings, the transaction, on the face of it, would attract Section 5E of the Act.

3. Sri Girish Kumar, learned Counsel appearing for the respondent herein, sought to place reliance on the judgment of the Division Bench of this Court in Rashtriya Ispat Nigam Ltd. v. Commercial Tax Officer, Company Circle, Visakhapatnam [1990] 77 STC 182 and submitted that having regard to the reasons already given and in view of the ratio laid therein, there is no warrant for interference nor to come to a different conclusion.

4. By taking into account the submissions made and on perusal of the material, the point that arises for consideration is whether in the facts and circumstances the leasing out of the advertisement hoardings would warrant the levy of tax u/s 5E of the Act. The said question is no longer res integra and on detailed consideration of the matter, this Court in Rashtriya Ispat case [1990] 77 STC 182 has already held that the nature of transaction has to be looked into and established and where there is no transfer of right to use and it is only for the hire charges, the same cannot be taxed.

5. We do not find any reason to differ with the said conclusions and following the same, the revision case is hereby dismissed. No costs.