
(1988) 06 AP CK 0033

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 40 of 1985

State of Andhra Pradesh

APPELLANT

Vs

Ranka Cables Pvt. Ltd.

RESPONDENT

Date of Decision : 16-06-1988

Acts Referred:

Central Sales Tax Act, 1956 — Section 2

Citation : (1990) 78 STC 111

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

Bench : Division Bench

Advocate : Government Pleader for C.T, for the Appellant; S. Dasaratharama Reddi, for the Respondent

Judgement

Jeevan Reddy, J.—This tax revision case is preferred by the State against the judgment and order of the Sales Tax Appellate Tribunal, Hyderabad, in so far as it held that the excise duty component cannot be included in the sale price for the purposes of the Central Sales Tax Act and therefore, cannot be brought to tax.

It is necessary to state a few facts : The respondent-assessee, Ranka Cables Private Ltd., Cuddapah, are engaged in the manufacture of cables and other electrical equipments. For the assessment years 1975-76, 1976-77, 1977-78 and 1978-79, in the assessments made under the Central Sales Tax Act, the Commercial Tax Officer, Cuddapah, included the Central excise duty in the turnover of the assessee.

During the relevant period, a scheme evolved by the Central Government called "Supplementary Cash Assistance Scheme" was in force. The scheme is found stated in the letter of the Government of India, Ministry of Foreign Trade, New Delhi, dated 6th January, 1971, addressed to the Secretary, Chemical and Allied Products, Export Promotion Council, Calcutta. The relevant portions of the letter may be extracted :

"Government of India have been considering requests from Indian suppliers for

grant of normal export benefits against supplies made in India to U.N. organisations against payment in free foreign exchange. It has now been decided that the supplies made by Indian firms in India under the aid programme of United Nations and other multi-national agencies at international prices will be eligible for grant of normal export benefits provided such supplies are paid for in free foreign exchange. Supplies made for the use of the agencies concerned will not be eligible for any export assistance.

2. In terms of above decision, Indian firms will be eligible for the grant of the following :

- (a) Import replenishment licences as per provisions contained in the Import Trade Control Policy (Volume II) for registered exporters.
- (b) Cash assistance at the rate announced in various instructions issued by Government from time to time.
- (c) Drawback of customs and Central excise duties.
- (d) Rebate of central excise duties on the finished products.
- (e) Concessional supplies of steel as otherwise permissible on exports."

Para 3 stated that Indian parties who wish to avail of the assistance should register themselves with the Export Promotion Council. Para 4 provided that applications for assistance must be submitted at the prescribed intervals. Para 5 stated :

"Since there will be no physical export, the customs and excise department will not pay the customs drawback and excise rebate respectively. In lieu of such benefits the parties will be allowed an equivalent amount as supplementary cash assistance. For this purpose, attested copies of Government notification announcing the rates of such refund allowed will be required to be furnished along with the application form."

It, is brought to our notice that the scheme is merely a continuation of another scheme evolved in 1970 (and contained in the letter dated 7th January, 1970) which makes the said assistance available even where the purchaser makes the payment in Indian currency so long as the schemes contained are those aided by World Bank or other international organisations. A copy of the letter dated 6th January, 1971 and of the letter dated 7th January, 1970, has been furnished to us by the learned Government Pleader for Commercial Taxes. We proceed on the assumption that it is this scheme which was in force during the relevant assessment years and that it is this scheme which is referred to in the order of the Tribunal.

Now what happened in this case is evident from a few bills placed before us. These bills show that after mentioning the price, the assessee added excise duty at 5 per cent ad valorem. Then towards the end of the bills, he deducted the very same amount of excise duty in view of the likely reimbursement under the

Supplementary Cash Assistance Scheme. In other words, the sale bills did not include the excise duty. It was included at the top, no doubt, but was deducted immediately in the light of the said scheme. The question that arises in the circumstances of the case is, whether the said excise duty component should be included in the sale price or in the turnover of the assessee. The definition of "turnover" and "sale price" in clauses (j) and (h) respectively of section 2 of the Central Sales Tax Act read as follows :

""turnover" used in relation to any dealer liable to tax under this Act means the aggregate of the sale prices received and receivable by him in respect of sales of any goods in the course of inter-State trade or commerce made during any prescribed period and determined in accordance with the provisions of this Act and the Rules made thereunder."

""sale price" means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed as cash discount according to the practice normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof other than the cost of freight or delivery or the cost of installation in cases where such cost is separately charged."

It is evident from the definitions that "turnover" means the aggregate of the sale price received and receivable by the dealer in respect of the sales effected by him. Similarly, "sale price" means the amount payable to a dealer as consideration for the sale of any goods.

There is no dispute before us that if the excise duty had not been deducted from the sale price, i.e., if it had been collected from the purchaser, it should have been and would have been included in the turnover or the sale price, as the case may be. But in this case, it is not so included as explained above. Nor can it be said in this case that the reimbursement of excise duty by the Government under the Supplementary Cash Assistance Scheme was on behalf of or on account of the purchaser. The said scheme was evolved by the Central Government in the larger interests of the industry and commerce and not merely or exclusively with a view to help the purchaser, of electrical goods from the assessee herein. The Tribunal was, therefore, right in holding that in such a situation the excise duty component cannot be included in the turnover of the assessee. It cannot be said that the, sale price charged by the assessee-respondent herein included excise duty.

For the above reasons, the tax revision case fails and is accordingly dismissed. No costs. Advocate's fee Rs. 150.

3. Petition dismissed.