(1997) 07 AP CK 0033

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 84 of 1989

State of Andhra Pradesh APPELLANT

Vs

T. Radhaiah RESPONDENT

Date of Decision : 04-07-1997

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 5, 6, 6A, 6A(ii)

Citation : (1998) 110 STC 39

Hon'ble Judges : V. Rajagopala Reddy, J;S.S. Mohammed Quadri, J

Bench : Division Bench

Advocate : The Government Pleader for Commercial Taxes and Panchayat Raj, for the Appellant; P. Srinivas Reddy, for the Respondent

Judgement

Syed Shah Mohammed Quadri, J.—Against the order of the Sales Tax Appellate Tribunal in T.A. No. 120 of 1982 dated April 11, 1986, the State is in revision before us. The case relates to the assessment year 1978-79. During that period, the respondents took on lease forest coupes, which were in the possession of Indian Space Research Organisation (for short "the SHAR"), Nellore district. The value of the firewood which was taken by the respondent, was quantified at Rs. 1,69,999.99. The said amount was treated as turnover for imposing tax u/s 6-A(2)(c) of the Andhra Pradesh General Sales Tax Act, 1957 (for short, "the Act"). Dissatisfied by the order of the Commercial Tax Officer, the respondent went in appeal before the Deputy Commissioner (Appeals), who by order dated November 25, 1981 dismissed the appeal. That order was assailed by the respondent before the Sales Tax Appellate Tribunal in the aforementioned T.A. which was allowed on April 11, 1986.

2. The learned Special Government Pleader contends that there is no basis for the Tribunal to hold that section 6-A of the Act was not attracted. The learned counsel Mr. Srinivasa Reddy, appearing for the respondent-assessee, submits that as the assessing authority did not determine the basic facts to justify the levy of tax u/s 6-A, the Tribunal was right in coming to the conclusion that

section 6-A was not attracted.

3. On the submissions of the learned counsel, the short question that arises for consideration is whether section 6-A of the Act is attracted to the facts of this case.

Section 6-A of the Act reads as follows :

"6-A. Levy of tax on turnover relating to purchase of certain goods. - Every dealer, who in the course of business -

(i) purchases any goods (the sale or purchase of which is liable to tax under this Act) from a registered dealer in circumstances in which no tax is payable u/s 5 or u/s 6, as the case may be, or

(ii) purchases any goods (the sale or purchase of which is liable to tax under this Act) from a person other than a registered dealer, and

(a) either consumes such goods in the manufacture of other goods for sale or consumes them otherwise, or

(b) disposes of such goods in any manner other than by way of sale in the State, or

(c) despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce,

4. shall pay tax on the turnover relating to purchase aforesaid at the same rate at which but for the existence of the aforementioned circumstances, the tax would have been leviable on such goods u/s 5 or section 6."

A perusal of the provision, extracted above, shows that it has two limbs. The first limb deals with purchases of goods made by any dealer from a registered dealer, in which case, firstly the assessing authority has to record that sale or purchase of goods in question gives rise to the levy of tax under the Act and secondly that circumstances exist in the case, due to which no tax is payable either u/s 5 or section 6 of the Act, as the case may be, for example, exemption granted to a particular seller or in respect of a particular transaction and the like.

The second limb deals with purchases of goods made by a dealer from a person other than a registered dealer, in which case he has to record that on sale or purchase of the goods in question, tax is exigible under the Act. In addition to the requirements of any of the above parts of the provision, one of the following three conditions has to be satisfied, viz., (a) the assessee-purchaser has consumed such goods in the manufacture of other goods for sale or otherwise; or (b) the assessee-purchaser has disposed of such goods in any manner other than by way of sale in the State; (c) the assessee-purchaser has despatched the goods to a place outside the State - it must be noted here that the sale or purchase in the course of inter-State trade or commerce, which necessitated despatch of goods, is excluded from the ambit of this clause.

5. It is only when, in addition to fulfilment of the conditions of the two limbs, one of the aforementioned requirements is satisfied, the purchaser can be made liable to pay tax u/s 6-A on the turnover relating to the purchases made by him. The same view is taken by the Division Bench of this Court in State of Andhra Pradesh Vs. Andhra Pradesh Dairy Development Corporation Limited, .

6. Now reverting to the facts of the case, it may be pointed out that the assessing authority proceeded to levy tax u/s 6-A on the only ground that no tax was paid. This is on the assumption that SHAR is a registered dealer. Indeed, in such a situation the assessing authority should have recorded that the turnover was liable to be taxed, but due to circumstances, to be mentioned by him, tax was not payable and was in fact not paid. Only when such a finding is recorded that section 6-A could have been invoked. The Tribunal held that merely because the assessing authority did not choose to subject SHAR to tax in respect of sale of firewood in question, it cannot invoke section 6-A, which view, for the aforementioned reasons, we endorse.

7. Treating SHAR as an unregistered dealer, the ingredients of the provision, pointed out above, have not been noted and no finding of fact, is recorded. This necessitates re-enquiry into the matter. But in view of the fact that transaction relates to the year 1978-79 and the amount of tax involved is about Rs. 5,000, we do not think it appropriate to remand the matter for further enquiry.

In the result we confirm the order of the Tribunal under revision and dismiss the T.R.C. No costs.

8. Petition dismissed.

