(1988) 08 AP CK 0013

In the Andhra Pradesh High Court

Case No : Tax Revision Case No''s. 165 and 175 of 1988

State of Andhra Pradesh APPELLANT

Vs

Tholasi Pandurangaiahchetty and Another RESPONDENT

Date of Decision : 16-08-1988

Acts Referred:

Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 — Section 12
Andhra Pradesh General Sales Tax Act, 1957 — Section 2

Citation : (1989) 75 STC 438

Hon'ble Judges : M.N. Rao, J;A. Seetharam Reddy, J

Bench : Division Bench

Advocate : Government Pleader for C.T. and P.R, for the Appellant;

Judgement

Seetharam Reddy, J.—The question that has been posed for determination is whether the market cess collected by the dealers within the meaning of section 12 of the A.P. (Agricultural Produce and Live Stock) Markets Act, 1966, can be said to form part of the taxable turnover for the purpose of levying sales tax. The Supreme Court, in similar circumstances, had an occasion to deal with, in a couple of decisions. The first one is reported in Anand Swarup Mahesh Kumar Vs. Commissioner of Sales Tax, , wherein it is held :

"From the observations made in the decisions referred to above, it follows that where a dealer is authorised by law to pass on any tax payable by him on the transaction of sale to the purchaser, such tax does not form part of the consideration for purposes of levy of tax on sales or purchases but where there is no statutory provision authorising the dealer to pass on the tax to the purchaser, such tax does form part of the consideration when he includes it in the price and realises the same from the purchaser. The essential factor which distinguishes the former class of cases from the latter class is the existence of a statutory provision authorising a dealer to recover the tax payable on the transaction of sale from the purchaser. It is on account of the above distinction that this court held in Bachan Singh Vs. Prithvi Singh and Others, , that the sales tax which a seller of foreign liquor was liable to pay u/s 21-A of the Madras Prohibition Act, 1937, did not form part of the turnover on which sales tax could be levied under the Madras General Sales Tax Act, 1959, because the seller was entitled to recover the sales tax payable by him from the purchaser. The relevant part of section 21-A of the Madras Prohibition Act, 1937, referred to above read thus :

''21-A. Every person or institution which sells foreign liquor - (a) and (b) ....

shall collect from the purchaser and pay over to the Government at such intervals and in such manner as may be prescribed, a sales tax calculated at the rate of eight annas in the rupee, or at such other rate as may be notified by the Government from time to time, on the price of the liquor so sold.''"

2. Once again, the Supreme Court reiterated, while confirming the observations made in the aforesaid case, in Central Wines v. Special Commercial Tax Officer [1987] 65 STC 48, wherein it is held :

"Sales tax charged by a dealer as ''tax'' in his bill to the purchaser but shown separately is part of the ''turnover'' within the meaning of the definition of ''turnover'' in section 2(s) of the A.P. General Sales Tax Act, 1957. The sales tax component of the sale price charged by the dealer to the purchaser is not collected by him as an agent of the State. Even if, therefore, the bill or the voucher issued to the purchaser indicates the amount of sales tax separately what is collected by the dealer from the purchaser is not tax but is merely a part of the sale price charged by the dealer to the purchaser. So far as the statute is concerned it does not cast any obligation on the purchaser of the goods to pay any tax and therefore, what is collected by the dealer from the purchaser by way of consideration for passing the property in the goods to the purchaser is the price charged by him and not tax collected by him from the purchaser. The amount of money which goes from the pocket of the purchaser to the pocket of the dealer as a condition or consideration for the passing of the property in the goods is thus the sale price and not the tax. It is the amount, but for the payment of which, the dealer would not transmit his title to the goods in favour of the purchaser, and not any amount paid by the purchaser towards any tax liability incurred by him on making the pnrchase of the goods. Nothing turns on whether the bill or voucher issued to the purchaser is so made out to show that the sales tax is charged separately. The consideration obtained by the dealer from the purchaser would in the eye of the law be the sale price regardless of what nomenclature is given to a part of the price charged by him." Adverting to the decision in Anand Swarup Mahesh Kumar Vs. Commissioner of Sales Tax, , it was held :

"It was further argued by learned counsel for the appellants drawing inspiration from Anand Swarup Mahesh Kumar Vs. Commissioner of Sales Tax, , that the matter requires reconsideration in the light of the observations made therein. We are unable to accede to this submission. In Anand Swarup Mahesh Kumar Vs. Commissioner of Sales Tax, , this court was concerned with the ''market fee'' collected by a dealer from the purchaser for being passed on to the market committee under U.P. Act No. 25 of 1964. It was an amount which the statute authorised the dealer to collect from the purchaser separately and directly under the authority of section 17(iii)(b)(1) of the said Act and to pass it on or make it over to the market committee. It is evident that it was an amount collected by the dealer under the statutory authority as an agent of the market committee for being passed on to the management committee and therefore, could not be treated as a component of the sale price of the goods which were sold to the purchaser."

3. The learned Government Pleader placed reliance on a decision of the Supreme Court reported in Hyderabad Asbestos Cement Products Ltd. v. State of Andhra Pradesh [1987] 65 STC 172, wherein the court was concerned with the amount of insurance paid to the dealer by the buyer covering the transit risk, whether to be included in the taxable turnover or not, held, "as a fact it has been found that the insurance charges were claimed in the bills of sale. That being the position, under clause (i) the amount becomes a part of the ''turnover'' and it is not necessary to rely upon (iii)(c) of the definition to bring the insurance charges within the meaning of ''turnover''."

4. It is, no doubt, true that whenever the buyer desires that the risk during transit should be covered and the seller recovers insurance charges from the buyers, such charges do not form part of the purchase price "has been approved by the Supreme Court." But in the case on hand, this point has no nexus nor, if we may say so, has any relevance. Hence it is of little or no assistance to the respondent. In so far as the proposition that falls for determination in the case on hand it is fully covered by the decisions of the Supreme Court in Anand Swarup Mahesh Kumar Vs. Commissioner of Sales Tax, , and in the latest decision reported in Central Wines v. Special Commercial Tax Officer [1987] 65 STC 48.

5. Their Lordships were categorical that the decision laid down in Anand Swarup Mahesh Kumar Vs. Commissioner of Sales Tax, , does not require any reconsideration. Hence, the market cess indisputably collected under statutory obligation in this case cannot, therefore, be said to form part of the taxable turnover. Hence, the Tax Revision Cases are dismissed in limine.

6. Petitions dismissed.