
(1991) 03 AP CK 0016
In the Andhra Pradesh High Court
Case No : T.R.C. No. 172 of 1990

State of Andhra Pradesh

APPELLANT

Vs

Thungabhadra Industries Ltd.

RESPONDENT

Date of Decision : 04-03-1991

Acts Referred:

Citation : (1992) 86 STC 235

Hon'ble Judges : Yogeshwar Dayal, C.J.;Upendralal Waghray, J

Bench : Division Bench

Judgement

Yogeshwar Dayal, C.J. and Upendralal Waghray, J.—The finding of the Tribunal contained in paragraph 5 of the judgment is as follows :

"As already stated the company is having 22 depots in various States. There are a number of wholesale dealers nominated by the appellant under separate agreements entered into with the wholesalers at the time of appointment and the wholesalers are attached to various depots. The wholesalers register their requirements with the depots to which they are attached in order to secure commitments as to the rate. The names of the wholesale dealers, their requirement, the rate at which the commodities are to be sold to the wholesalers are entered in a register called "souda register". These "soudas" are communicated to the factories. Irrespective of the outstanding indents, the factories go on despatching their products to various depots in truck-loads at frequent intervals of three or four days in routine course. The goods are moved as goods of the appellant-company as evidenced by the excise gate pass and way bill, the consignee being the depot. The goods are unloaded at the depot godowns in various States and entered in their stock registers. The goods in the godowns were also insured by the appellant-company. Then the wholesale buyers who have placed their indents or who require the goods approach the depot and purchase the requirement on payment of cash. The depots issue bills to the wholesale purchasers and deliver the goods. The date of booking the order does not determine the priority of sale. Thus the quantum of sale and the date of sale

are unpredictable. The appropriation of goods against a particular contract thus takes place only at the depot when the invoice is raised after receipt of payment and the goods are separated for purpose of delivery to the wholesaler."

2. The Tribunal also made sample checking of the two sales considered by the revisional authority. One such sale considered is contained in paragraph 14 of the judgment extracted below :

"The learned counsel for the appellant even admitted that the transactions in respect of depot transfers are similar to those that are taken as sample and analysed by the revisional authority for determining the dispute. It is necessary to consider how far these two instances justify the conclusion arrived at by the revisional authority. The first instance relates to the depot at Bangalore. M/s. Lakshminarayana Stores, Bangalore, placed an indent on the depot at Bangalore on March 23, 1983, in indent (souda) No. 821 for supply of 50 tins. Annexure B-1 to the objections filed by the appellant is the statement showing receipts, deliveries and closing stocks of Bangalore depot for the month of March, 1983. It shows that on that day there was an opening stock of 325 tins in the depot. There were no receipts on that day from the factory. On March 24, 1983, 600 tins were received and therefore the total stock rose to 925 tins by March 24, 1983. On March 24, 1983, 600 tins were sold. So, the balance again came down to 325. On March 25, 1983, there were no receipts in the depot. But subsequently on March 26/27, 1983 and March 28/29, 1983 and March 30, 1983, 600 tins, 1,350 and 600 tins were received in the depot from the factory. Thus M/s. Lakshminarayana Stores which has indented for 50 tins on March 23, 1983, actually purchased the indented goods on March 31, 1983 under bill No. 1633. Thus it could be seen that there was sufficient stock in the Bangalore depot on March 23, 1983, on which day M/s. Lakshminarayana Stores, Bangalore, indented for supply of 50 tins. Even on the subsequent dates till March 31, 1983, on which day M/s. Lakshminarayana Stores actually paid the cost of the indented goods and took delivery, there were sufficient stocks. So simply because the depot had communicated the soudas to the factory, it cannot be said that the despatches made by the factory to the depot after receipt of the souda is intended to be appropriated towards the order placed by M/s. Lakshminarayana Stores. Apart from that the actual deliveries are made by the company long after the indents at the convenience of the wholesaler on payment of cash. So the movement of goods from the factory cannot be said to have any nexus with any particular indent. It is also clear that the goods are sent in truck-loads at regular intervals having regard to the requirements of each depot as each depot has specified limits of storing capacities."

3. A similar treatment of the other transaction is given in another paragraph 14 at page 7 in the same way as the wholesale transaction in favour of M/s. Lakshminarayana Stores, Bangalore. This is how the transactions are being conducted. There was no movement of specific goods from the factory to the wholesalers in pursuance of any prior order being placed by the wholesalers on

the depots as indented by the wholesalers.

4. We are in complete agreement with the reasoning and conclusion of the learned Sales Tax Appellate Tribunal that it is not a case of inter - State sale of goods at all.

With these remarks, the tax revision case is dismissed.

5. Petition dismissed.