(1998) 09 AP CK 0024

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 168 of 1998

State of Andhra Pradesh APPELLANT

Vs

Usha Breco Ltd. RESPONDENT

Date of Decision : 16-09-1998

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 22
Central Sales Tax Act, 1956 — Section 3

Citation : (2001) 121 STC 621

Hon'ble Judges : T. Ranga Rao, J;S.V. Maruthi, J

Bench : Division Bench

Advocate : Special Govt. Pleader, for the Appellant;

Final Decision : Dismissed

Judgement

S.V. Maruthi, J.—This tax revision case is filed against the orders passed by the Sales Tax Appellate Tribunal, Andhra Pradesh, Hyderabad, in T.A. No. 577 of 1995 dated February 26, 1998.

2. The Revenue is the petitioner. The respondent was engaged in the execution of works contract at project site of the contractee, namely, Andhra Pradesh State Electricity Board at Vijayawada Thermal Power Station (VTPS). It was not registered as local dealer. Assessment has arisen out of information gathered from the record of VTPS from their purchase order dated February 1, 1988 raised on the respondent for Rs. 2,44,52,299. The name of the equipment and work was indicated as "Fire Protection System". According to the C.T.O., subsequent to the 46th Amendment of the Constitution and consequent amendment to the Andhra Pradesh General Sales Tax Act, the turnover involving execution of works contract ought to be treated as general goods. Therefore, he brought the entire turnover of Rs. 2,44,52,299 to tax without any exemption for the local component involved, for want of details. On appeal, it was confirmed. On further appeal, the Tribunal, held that the machinery and equipment were supplied in the course of inter-State trade and right from the stage of design, it was

exclusively done according to the specifications of the customer, who also inspected the work in process at every stage. Merely because the equipment was installed and erected in the State of Andhra Pradesh, it cannot be said to be a local sale. In support of their decision, the Tribunal relied upon the judgments in Gannon Dunkerley and Co. and Others Vs. State of Rajasthan and Others, and Builders'' Association of India v. State of Karnataka [1993] 88 STC 248 (SC) The Tribunal further held that once it is recognized that the sale has occasioned the movement of goods, the sale would be an inter-State sale and once it is an inter-State sale, situs of sale would be irrelevant. The Tribunal also observed that the Supreme Court held that every sale must necessarily have a situs including the inter-State sale, but the situs of the sale does not determine the character of sale as to whether it was inter-State or intra-State. In view of the judgment of the Supreme Court in Union of India (UOI) and Another Vs. K.G. Khosla and Co. Ltd. and Others, , the Tribunal held that the fact the machinery was installed in Andhra Pradesh does not empower the State of Andhra Pradesh to levy sales tax under the Andhra Pradesh General Sales Tax Act. Aggrieved by the same, present revision case is filed.

3. The main argument of the learned counsel for the Revenue is that the dealer is not a registered dealer in Andhra Pradesh. On information gathered from VTPS, the assessee has not paid taxes in so far as the components locally purchased. Therefore, in respect of components locally purchased, the State is competent to levy tax.

4. The above argument was not raised either before the lower authorities or before the Tribunal. Had this argument been raised before the lower authorities, perhaps they would have dealt with it and the material would have been produced before them. Since this argument was not raised before the lower authorities and the Tribunal, the Revenue cannot be permitted to raise the same at this stage. As regards the finding that the transaction is an inter-State transaction and therefore not liable to tax under the Andhra Pradesh General Sales Tax Act, in our view is correct and we do not see any error in the orders of the Tribunal. The tax revision case is therefore, dismissed. No costs.

