
(1962) 04 AP CK 0003

In the Andhra Pradesh High Court

Case No : Tax Revision Petition No. 64 of 1961

State of Andhra Pradesh

APPELLANT

Vs

Vauhini Pictures Private Ltd.

RESPONDENT

Date of Decision : 17-04-1962

Acts Referred:

Income Tax Act, 1961 — Section 24

Citation : (1962) 13 STC 847

Hon'ble Judges : Munikanniah, J;Basi Reddy, J

Bench : Division Bench

Advocate : D.V. Sastry, for Third Government Pleader, for the Appellant; T. Anantha Babu and K.S. Murty, for the Respondent

Final Decision : Dismissed

Judgement

Munikanniah, J.—The State of Andhra Pradesh has filed this tax revision case against the decision of the Sales Tax Appellate Tribunal allowing from the gross turnover of a deduction of Rs. 1,261-07 nP. as in their view it represented the sale price of the publicity material returned by the exhibitors to the assessee.

2. The facts are in a narrow compass and are not also in dispute. Vauhini Pictures Private Ltd., Vijayawada, is engaged in the business of distribution of the cinematograph films. In the course of their business, that company supplied publicity materials for the use of the exhibitors. Some of the publicity materials so sold to the exhibitors in the year 1957-58 were actually returned in 1958-59 and the sale price of the same had been refunded by the assessee namely, Vauhini Pictures Ltd., Vijayawada, to the purchasers. This claim which has been so put forward by the assessee was rejected by the Deputy Commercial Tax Officer, Vijayawada, and the same was approved by the Deputy Commissioner, Kurnool, when it came before him. The Sales Tax Appellate Tribunal, Hyderabad, held the view that Rule 6(1) (b) (i) of the Andhra Pradesh General Sales Tax Rules, providing for deduction in respect of the goods so returned and in regard to which there was refund, applied to the facts of this case. They, therefore,

determined the assessable net turnover after making allowance of this item. Against this order of the Tribunal, is the present revision petition.

3. On behalf of the State, it is fairly conceded that Rule 6 provides for a deduction of the nature claimed by the assessee, but that the refund in respect of the sales which have been effected in the year previous to the assessment year, would not be within the purview of that rule. In other words, what is contended for is that the deduction so claimed should be in respect of those goods which have been sold in the year of assessment and which have been returned and in respect of which there is refund in the assessment year itself. In support of this contention, it is urged that any lenient view of the matter of allowing deduction in respect of refunds for returned goods in the previous years would lead to needless complications in the computation of the net turnover and that inasmuch as it has not been specified in that particular rule that these deductions are also in respect of the return of the article and refund to the purchaser of the sale price in previous years, the allowance provided in that rule should not be extended to the return of the articles sold in the previous years. Therefore, the question which falls to be considered is whether, as contended for by the learned Government Pleader, the language of Rule 6 could be taken to be so restrictive as to exclude the return of articles sold in previous years.

4. For a correct understanding of what is meant by that rule, it is necessary to set it out and examine it. The relevant parts of that rule read :

6. (1) The tax or taxes under Sections 5, 6 or notified u/s 9(1) shall be levied on the net turnover of a dealer. In determining the net turnover, the amounts specified in Clauses (a) to (1) shall, subject to the conditions specified therein, be deducted from the total turnover of a dealer-

(a) * * * (b) (i) all amounts allowed to purchasers in respect of goods returned by them to the dealer when the goods are taxable on sales provided the accounts show the date on which the goods were returned and the date on which and the amount for which refund was made.

5. The provision in the Andhra Pradesh General Sales Tax Act, 1957, which makes sales of goods assessable to sales tax is contained in the portion of Section 5(1) extracted hereunder :

(1) Every dealer (other than a casual trader and an agent of a non-resident dealer) whose total turnover for a year is not less than Rs. 10,000 and every casual trader or agent of a non-resident dealer, whatever be his turnover for the year, shall pay a tax for each year, at the rate of two naye paise on every rupee of his turnover.

6. Though it is the turnover in respect of the sales in a year on which sales tax is leviable, reading this section with Rule 6, it is plain that it is not the gross turnover but it is the net turnover after the deductions are allowed that is assessable to tax. There is no controversy in regard to this. But, as has already

been pointed out, the contention is that the deduction claimed in respect of the refund of the sale price for returned goods should also be in respect of the goods sold out in the year of assessment. The principle that when a sale falls through on account of return of goods and refund of sale price, no actual sale takes place in respect of it and no sales tax could be claimed, is beyond doubt. While so, in interpreting the language of Rule 6, it becomes all the more necessary that the principle, there could be no tax in regard to a sale which has not been actively and effectively put through though at first intended to be a sale, should be kept in mind. Mere hardships which crop up in applying this rule cannot, stand in the way of correct construction of this rule. Further, we are firmly of the view that anything which the language of the rule itself cannot convey, should not be imported into it, merely on the ground that either a lacuna exists or a hardship is caused in giving effect to the rule as it stands. Bearing this in mind, it is, therefore, necessary to scan the relevant portions of Rule 6, which have been extracted above. Sub-rule (1) lays down in unequivocal terms that in determining the net turnover, the amounts specified in Clauses (a) to (1) of Sub-rule (1) shall be deducted from the total turnover of a dealer and the only limitation which has been placed, while effecting those permissible deductions, has been with reference to the conditions as laid down in those clauses. This became more obvious if regard is had to the words "the amounts specified in Clauses (a) to (1) shall, subject to the conditions specified therein, be deducted from the total turnover of a dealer", which occur in that rule. The language so used when construed properly gives no room for importing any further intendment apart from the language and conditions so contained in that clause. It is not, therefore, possible to lay down any other limitations with a view merely to get over certain hardships caused to the assessing authority or for preventing advantages which legitimately accrue to the assessee. It may also be pointed out that it is not improper to allow an assessee to have benefits that may accrue to him on account of a lacuna that exists because the condition which is specifically laid down in the taxing statute itself is not well thought out. While such are the salutary canons of construction in the matter of taxing statutes, it becomes rather difficult for us to have to also attack any further conditions which have not been specifically made mention of or which are not possible to be culled out from the language of the section or rule. Any equitable or other considerations calculated to help the taxing authorities are indeed tabooed in the matter of construction of taxing laws.

7. As has been pointed out by Rowlatt, J., in *Cape Brandy Syndicate v. Inland Revenue Commissioners* [1921] 1 K.B. 64 at 71:

In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.

8. The same caution has been administered by Lord Cairns in *Partington v.*

Attorney-General (1869) L.R. 4 H.L. 100, 122.

...If there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you simply adhere to the words of the Statute.

9. It is not necessary to have to multiply instances where this principle of interpretation is stressed and the caution underlying it is administered. We find that Rule 6(1)(b)(1) discreetly omits to mention that the deduction claimed for refund of price in regard to the return of goods should be confined only to a particular period. All that rule mentions is that when goods are taxable on sales, the amounts allowed to purchasers in respect of the goods returned by the purchasers to the dealer is an allowable item. Further on, the condition laid down in that rule (despite repetition) says "provided the accounts show the date on which the goods were returned and the date on which and the amount for which refund was made." It looks to us that the mention of the date is not with a view to find out when the claim for deduction has arisen, but only to make it feasible for the taxing authority to verify when the goods were got by the seller and how refunds were made in respect of them. Therefore, to have to read into this fact that the date of the return of the goods is to be specified by the assessee and that a revaluation in respect of the time of the transactions is also implied with a view to restrict deductions in the year of assessment, is not warranted by the language of this rule. Nor can it be said that this rule was contemplating the taking into account of the return of the goods only in the assessment year and not in regard to goods sold out previously but were returned in the assessment year. No doubt, the learned Government Pleader contends that the computation of the turnover for assessment after making deductions in respect of the refund for sales in the previous years could not have been thought of at all by the taxing statute. But we are unable to accede to this way of reading the rule, because there is the simple fact that if that was meant to be the way in which that rule should operate, nothing, in our view, prevented the rule-making authority to have been specific about it, and to expressly impose limitations in definite words instead of asking us to so construe it without the basis therefor. It may not be out of place to have to refer in this context to the presence of the provisions of Section 24 of the Income Tax Act where losses which have accrued to an assessee in the previous years are allowed to be set off against the income of the assessment year. But then, such a deduction is clearly hedged in by specific limitations which are definitely mentioned in that section itself. Therefore, when it is not unknown that this device of including limitations in regard to concessions is resorted to by specific mention in the statute or rules, we are not able to extend the scope of the rule beyond what its language connotes. Therefore, for these reasons and having regard to the language of Section 5 and Rule 6 and also because in the instant case the assessee claimed refund in respect of the sales only for the previous year, we have no hesitation in accepting the conclusion reached by the Tribunal that the deduction is allowable.

10. Before taking leave of this case, it is necessary to refer to the decision of the Madras High Court reported in *Devi Films (Private) Ltd., Madras v. The State of Madras* [1961] 12 S.T.C. 274 and which has been relied upon by the Tribunal. No doubt, the wide language used in the decision gives the scope for believing that the Division Bench which dealt with that case construed the return of the goods sold on hire-purchase system as also coming under Rule 5(1)(b) of the Madras General Sales Tax (Turnover and Assessment) Rules, which were the counterpart of Rule 6(1) of the Andhra Pradesh General Sales Tax Rules, 1957. But we are unable really to appreciate, because when an article is returned by the hirer under the hire-purchase agreement by reason of default in the payment of the balance of sale price, there is no refund of sale price as such in respect of that return of those goods. It is unconvincing that such a situation is also contemplated under Rule 5(1)(b). But in the view we have taken of the interpretation of the rule and the inability of Courts to extend the meaning of the words beyond the meaning which the language of the rule conveys or the inability of Courts to import any new or further words, or to work out the intendment of that rule beyond the language, we consider that we need not further discuss this decision.

11. From the above, it follows that this petition should be dismissed with costs. Advocates' fee Rs. 100.