(1996) 07 AP CK 0021

In the Andhra Pradesh High Court

Case No : Tax Revision Case No''s. 169, 175, 182, 203, 206, 208, 214 and 215 of 1989

State of Andhra Pradesh APPELLANT

Vs

VBC Exports Ltd. and Others RESPONDENT

Date of Decision : 10-07-1996

Acts Referred:
Andhra Pradesh General Sales Tax Act, 1957 — Section 2, 9, 9(1)

Citation : (1996) 103 STC 532

Hon'ble Judges : S.S. Mohammed Quadri, J;B. Sudershan Reddy, J

Bench : Division Bench

Judgement

Syed Shah Mohammed Quadri, J.—In these T.R.Cs. the question that arises for consideration is whether the benefit of G.O. Ms. No. 116 dated 8th February, 1989, issued u/s 9(1) of the Andhra Pradesh General Sales Tax Act (for short, "the Act"), would be effective from the date of publication of the G.O. or from the date of commencement of the assessment year.

2. To appreciate the question, we shall refer to the facts in T.A. No. 329 of 1989 which represents the facts in other cases.

3. The assessee is a dealer in prawns, etc. In the assessment year 1988-89 (for the period from April, 1988 to September, 1988) they reported a total turnover of Rs. 2,86,71,783. Out of the said turnover they claimed that a sum of Rs. 2,67,62,033 represented export sales. The assessing authority disallowed the same. The petitioner unsuccessfully filed an appeal before the Appellate Deputy Commissioner and thereafter he approached the Sales Tax Appellate Tribunal. There is another development which needs to be noted and which is relevant for the disposal of this case, this is, by the orders issued in G.O. Ms. No. 116 dated 8th February, 1989, the Government granted exemption on the sale and purchase of prawns within the State. The said G.O. which was issued in the assessment year 1988-89, reads as follows :

NOTIFICATION

"In exercise of the powers conferred by sub-section (1) of section 9 of the Andhra Pradesh General Sales Tax Act, 1957 (Andhra Pradesh Act No. VI of 1957), the Governor of Andhra Pradesh hereby exempts from the tax payable under the said Act on the purchases or sales of prawns."

4. From a perusal of the notification extracted above, it is clear that exemption is granted u/s 9(1) of the Act from payment of sales Tax on the purchases or sales of prawns. No specific date is mentioned from which the said G.O. would come into operation.

5. Whereas the Revenue contended that the benefit of the G.O. would be applicable only from the date of the G.O., the assessee argued that as the assessment is for the whole year the benefit of the G.O. should enure in respect of the whole year of assessment.

The expression "year" is defined in section 2(u) :

"''Year'' means the twelve months ending on the 31st day of March."

6. If the contention of the Revenue is accepted, the benefit would be available to the assessee only from 8th February, 1989 to 31st March, 1989, but if the assessee''s contention is accepted, the whole turnover from 1st of April, 1988 to 31st of March, 1989 would be exempted.

7. Inasmuch as the sales tax is an yearly tax and the turnover of the whole year is liable to be taxed, the exemption granted during the course of the year would enure to the benefit of the assessee for the whole year. For the purpose of exemption, the assessment cannot be split into different periods. In Mathra Prashad and Sons Vs. State of Punjab, the question which arose for consideration of the Supreme Court was whether the notification issued by the Government exempting manufactured "tobacco" from the levy of sales tax by including item 51 in the Schedule of exemption on 27th September, 1954, had effect only from the date of issuance of the notification or from the beginning of the financial year. It may be noted herein that the notification itself did not mention the date from which the exemption operated. In the said decision Mr. Justice Hidayatullah, as he then was, observed that as the tax under the Act was yearly and had to be paid on the taxable turnover of a dealer, then the exemption, whenever it came in, in the year for which the tax was payable, would exempt sales of those goods throughout the year, unless the Act said that the notification was not to have this effect, or the notification fixed the date for the commencement of the exemption.

8. As noted above, in the instant case, there is nothing in the Act which prohibits grant of exemption u/s 9 of the Act for the whole year of assessment and in the notification no date is specified from which it would operate. Therefore, it follows that G.O. Ms. No. 116 dated 8th February, 1989 would exempt the turnover for the whole year commencing from 1st of April and ending with 31st of March. In this view of the matter, we do not find any merit in the T.R.Cs. The T.R.Cs. are

accordingly dismissed. In the circumstances of the case, there shall be no order as to costs.

9. Petitions dismissed.