

(1955) 03 AP CK 0014

In the Andhra Pradesh High Court

Case No : Tax Revision Case no. 214 of 1953

State of Madras

APPELLANT

Vs

Tungabhadra Industries Ltd., Kurnool

RESPONDENT

Date of Decision : 18-03-1955

Acts Referred:

Citation : AIR 1955 AP 245

Hon'ble Judges : Umamaheswaram, J;Chandra Reddy, J

Bench : Division Bench

Advocate : D. Narasaraju, General for M. Seshachalapathi, Govt. Pleader, for the Appellant; K. Rajah Ayyar, M. Ranganadha Sastri, K.V. Kapali Sastri and A. Bhajanga Rao, for the Respondent

Judgement

Chandra Reddy, J.

(1) The interpretation of S./ 2"1), Madras General Sales Tax Act as amended by the Legislative Assembly of the Andhra State in May 1954 is involved in this case. The assessment relates to the year 1949-50.

(2) In the return of turnover submitted by the assessee, the tax collected from the purchasers was excluded. The Sales Tax Department sought to levy tax on this tax on the ground that it formed part of the turnover. The Sales Tax Appellate Tribunal before whom the matter was carried in appeal by the assessee accepted the contention of the assessee and gave relief to him in that respect. The Government have preferred this revision petition against the order of the Appellate Trubunal. Pending this petition, the Andhra State Legislature amended the definition of turnover" by substituting the following:

"Turnover means the total amount set out in the bill of sale (or if there is no bill of sale, the totla amount charged) as the consideration for the sale or purchaser of goods (whether such consideration be cash or deferred payment or any other thing of value), including any sums charged by the dealer for anything done in respect of the goods sold at the time of or before delivery of the goods and any

other sums charged by the dealer, whatever be the description, name or object there of".

(We are not concerned in this enquiry with the other provisions of the amended section).

Prior to the amendment, S. 2 (1) read thus:

""Turnover" means the aggregate amount for which goods are either bought by or sold by a dealer whether for cash or for deferred payment or other valuable consideration, provided that the proceeds of the sale by the person, of agricultural or horticultural produce grown by himself or grown on any land in which he has an interest, whether as owner, usufructuary mortgagee, tenant or otherwise, shall be excluded from his turnover.

Interpreting the definition of turnover as it stood prior to the amendment by the Legislature of the Andhra State a Bench of the Madras High Court in -- Deputy Commr. of Commercial Taxes Coimbatore Division, Coimbatore and Others Vs. M. Krishnaswami Mudaliar and sons, Vellore and Others, declared that the tax collected by a dealer did not constitute part of the turnover and therefore was not liable to be taxed again. Recently, we took the same view in -- "State of Andhra v. Shree Bajranga Jute Mills Ltd., Guntur", AIR 1955 Andhra 241 (B). But subsequent to the rendering of the judgment in that case, the learned Government Pleader brought to our notice the amended definition and requested us to reconsider the matter in the light of this amendment.

(3) It is contended by the learned Advocate-General for the Government that the amended definition is of wider import and brings within its ambit the tax collected by the dealer and the judgment of the Madras High Court based on the unamended definition cannot govern this case. According to him, the clause "and any other sums charged by the dealer whatever be the description, the name or object thereof" takes in the tax collected by the seller. The expression, "whatever be the description, the name or object thereof", continues the Advocate-General, is significant and embraces every item mentioned in the bill or paid into the hands of the seller.

It is urged that the clause "including any sums charged by the dealer for anything done in respect of the goods sold at the time of or before the delivery of the goods and any other sums charged by the dealer whatever be the description, name or object thereof" has reference to "the total amount set out in the bill of sale". In our opinion, this construction is opposed to the plain and ordinary meaning of the language of the sub-section.

The total amount set out in the bill can have reference only to the consideration for sale and it is in the consideration that these sums, charges etc., are included. So what is made comprehensive is the consideration for sale. To adopt the other interpretation would be straining the language a bit too much. If so, could a tax collected by a dealer come within the meaning of consideration for sale?

(4) It has been pointed out by us in AIR 1955 AP 241 (B) and by the Bench of the Madras High Court in -- "Dy. Commr. of Commercial Taxes, Coimbatore v. M. Krishnaswami Mudaliar & Sons (A)" that the dealer collects tax as an agent on behalf of the taxing authority, and therefore, it could not be subject to taxation. While conceding this position to be correct, what is argued by the Advocate General is, that by deleting Ss. 8-B and 8-C from the Statute Book, the power given to a registered dealer to collect the tax was withdrawn.

(5) To appreciate this contention, it is necessary to refer to S. 8-B which is in the following words:

"Section S-B (1): No person who is not a registered dealer shall collect any amount by way of tax under this Act, nor shall a registered dealer make any such collection except in accordance with such conditions and restrictions, if any, as may be prescribed:

Provided that the State Government may exempt persons who are not registered dealer from the provisions of this sub-section until such date, not being later than the 1st day of April, 1948, as the State Government may direct.

(2) Every person who has collected any amount by way of tax under this Act, on or after the 1st day of April, 1947, shall pay over to the State Government within such time and in such manner as may be prescribed, all amounts so collected by him if they are in excess of the tax, if any, paid by him for the period during which the collections were made; and, in default of such payment, the amounts may be recovered as if they were arrears of land revenue".

It is argued that it is by virtue of S. 8-B (1) that a dealer is entitled to collect tax under the Act from the purchaser, and S. 8-B (2) contemplates that liability of the registered dealer to pay to the State the tax collected by him, and that the moment the privilege granted under S. 8-B (1) is withdrawn, the liability under S. 8-B(2) ceases. By reason of the omission of these two sub-sections any collection made by the dealer will be unauthorised and therefore it will form part of the turnover, as evident from -- "Bata Shoe Co. Ltd. v. Board of Revenue, West Bengal" 1948 1 STC 193 (Cal) (C). We do not think we can accede to this proposition.

It is clear from S. 8-B(1) that it does not confer in specific terms authority on the dealer to collect the tax. It is only by implication that this power can be gathered. It contains express prohibitions in respect of matters contained therein. The positive authority in this behalf is given by the Turnover and Assessment Rules, Rule 5-A(7) of these rules runs thus:

"A registered dealer may collect amounts by way of tax or taxes under the Act subject to the following conditions: (1) He shall not collect any amount or amounts by way of tax or taxes under the Act at a rate or rates exceeding the rate of rates specified in S. 3 or 5 or notified under S. 6(1), (2) He shall paying full the amount or amounts collected by him by way of tax or taxes to the State

Government on or before the 30th April of the year succeeding that in which such collection is made".

Thus, this rule contains a provision authorising a registered dealer to collect tax subject to the conditions mentioned therein and also imposes a liability on him to pay in full the amount so collected by him. This rule performs the same function as S. 8-B(1) of the Act in regard to the right of a dealer to collect the tax on the sales effected by him and the repeal of that sub-section does not, in our opinion, affect the rights in any way. Despite the disappearance of S. 8-B(2), the liability of the dealer to make over the payment to Government still continues under sub-rule (7) (2).

Sub-rules (8) and (9) proceed on the footing that the registered dealer retains the right to collect the tax and is under an obligation to pay it in full to the Government. Rule 8 says:

"The assessing authority may call for an examine the accounts of the registered dealer for the purpose of satisfying himself that the dealer has paid in full the amount or amounts collected by him by way of tax or taxes, as required by condition (ii) in sub-rule (7):

Provided that this power shall be exercised before the expiry of two years next succeeding that in which the collections were made.

(9) If the assessing authority is satisfied that any amount or amounts collected by the dealer by way of tax or taxes have not been paid by him to the State Government in any year as required by condition (ii) in sub-r, (7), the assessing authority shall issue a notice to the dealer in Form B-2 specifying therein the total sum withheld by the dealer and the dealer shall pay such sum at the time and in such manner specified therein".

Before it can be siad that the whole tax structure which has been in vogue for several years has been altered, something more is necessary than the mere omission of a provision in the Act which performs the same function by implication as the rules extracted above. Further, Form A prescribed for the return of turnover contains two columns 10 and 11, one for net turnover liable to be taxed and the other for the amount actually collected by way of tax of taxes and it is still in force. So long as it is there, the dealer has to follow this form. Under this form he has to show the amount collected by him by way of sales-tax and which he has to make over to the Government.

(6) It was then argued by the Advocate-General that by repealing S. 8-B the Legislature must be understood to have repealed the rules mentioned supra because when the main section under the authority of which the rules are framed is deleted, the rules must also be deemed to have been repealed. We do not think we can give effect to this contention. The rules extracted above were not issued under S. 8 of the Act. This rulemaking authority is derived from S. 19 and it is to carry out the purposes m,entioned in S. 3, sub-ss (4) and (5) that the

rules have been framed.

(7) Section 3, sub-ss. (4) and (5) read thus:

Section 3(4): for the purposes of this section and the other provisions of this Act, turnover shall be determined in accordance with such rules as may be prescribed; Provided that no such rules shall come into force unless they are approved by a resolution of the Legislative Assembly. (5) The taxes under sub-ss. (1) and (2) shall be assessed, levied and collected in such manner and in such instalments, if any as may be prescribed".

(8) It is thus clear that it is to carry out the intendment of sub-rr. (4) and (5) that the rules came into existence. Their existence is "de hors" S. 8-B (1), and consequently the result contended for by the Advocate-General does not follow.

(9) It was next maintained by the Advocate-General that since these rules are repugnant to S. 2 (1) of the Act and both cannot stand together, a repeal must be inferred. To support this argument he called in aid some passages from "Maxwell on Interpretation of Statutes" and "Craies on Statute Law". At p. 160 of "Maxwell on Interpretation of Statutes" (Edn. 10) the following passage occurs:

"An author must be supposed to be consistent with himself, and, therefore, if in one place he was expressed his mind clearly, it ought to be presumed that he is still of the same mind in another place, unless it clearly appears that he has changed it. In this respect, the work of the Legislature is treated in the same manner as that of any other author, and the language of every enactment must be construed as far as possible in accordance with the terms of every other statute which it does not in express terms modify or repeal. The law, therefore, will not allow the revocation or alteration of statute by construction when the words may be capable of proper operation without it.

It cannot be assumed that the Parliament has given with one hand what it has taken away with another. But it is impossible to construe absolute contradictions. Consequently, if the provisions of a later Act are so inconsistent with, or repugnant to, those of an earlier Act that the two cannot stand together, the earlier stands impliedly repealed by the later".

Again at p. 164, it is stated:

"When the later of two general enactments is couched in negative terms, it is difficult to avoid the inference that the earlier one is impliedly repealed by it. For instance, where a general Act exempted from licensing regulations the sale of a certain kind of beer and a subsequent one enacted that "no beer" should be sold without a licence, it would obviously be impossible to save the former from the repeal implied in the later"

These passages do not really advance the case of the petitioner. It is clear from these statements that consistency and not repugnancy must be presumed as far as possible and each enactment or a provision in it should be read so as to

reconcile it with other provisions of the enactment. It is only in cases where it is not possible to adopt such construction and the language of one section is so inconsistent with or repugnant to those of the other and the two cannot stand together, the earlier stands impliedly repealed by the later. The rule is stated in similar terms in "Crabtree on Statute Law" at p. 337:

"Where two Acts are inconsistent or repugnant, the later will be read as having impliedly repealed the earlier. The Court leans against implying a repeal unless two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time, a repeal will not be implied."

This passage has very succinctly summed up the principle applicable to implied repeals. Such a situation does not arise here.

(10) It is only if it is assumed that the turnover as defined under the amended section is comprehensive enough to take in sales-tax, the question of repugnancy between that and Rr. 7 and 8 will arise. As already stated, the Courts should as far as possible, read two provisions of an enactment so as to harmonise them and not readily read repugnancy between them. Instead of assuming repugnancy between the definition and the rules, the former must be read in the light of the latter.

(11) It was then contended that the Legislature must be presumed to have intended that turnover should include tax collected also. In considering whether the content of the definition could include tax, it is well to remember that under the Sales Tax Act, tax is levied on the occasion of sale. It has been pointed out both, in -- "Madras Province v. Boddu Paidanna & Sons", AIR 1942 FC 33 (D) and by the Supreme Court in -- The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others, that the liability to tax under the Sales Tax Act arises only on the occasion of sale which means that only after the sale is completed the tax would be levied.

How then can tax be levied on a tax collected on the occasion of sale? The interpretation suggested for the petitioner is opposed to the very concept of tax on sales. The tax-structure should conform to the scheme of the Act which only provides for levy of tax on sale of goods as the very conception underlying the Act implies. To accept the connotation given to it by the Advocate-General would be to unduly enlarge the scope of the definition of turnover.

(12) We must also observe that, if, as argued by the Advocate-General, the authority given to the dealer to collect the tax from the purchaser was withdrawn by the omission of S. 8-B (1) there is no need for including tax collected by the dealer within the definition of turnover. The question of levying tax on the tax collected by the dealer would only arise if he is permitted to collect the tax.

(13) In our view, the definition of "turnover" as amended by the Andhra State Legislature, is not comprehensive enough to include sales tax collected by the dealer. It follows that the conclusion of the Appellate Tribunal is unassailable. In

this view of the matter, it is not necessary for us to go into the larger question, relating to the competence of the Provisional Legislature to define "turnover" embracing sales tax while legislating under the aforementioned entry.

(14) In the result, the petition is dismissed with costs. Advocate s" fee is fixed at Rs.250/-.

(In the view taken above, our judgment in AIR 1955 AP 241 (B) is correct and does not require re-consideration or review).

(15) Petition dismissed.