

(1976) 07 AP CK 0010
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 647 of 1975

Surana and Company

APPELLANT

Vs

The State of A.P. and Another

RESPONDENT

Date of Decision : 21-07-1976

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1977) 40 STC 192

Hon'ble Judges : Vimadalal, J;Gangadhara Rao, J

Bench : Division Bench

Advocate : C.P. Sarathy, for the Appellant; The Government Pleader for Commercial Taxes, for the Respondent

Final Decision : Dismissed

Judgement

Gangadhara Rao, J.—This appeal Is filed against the Judgment of Chinnappa Reddy, J., in Writ Petition No. 694 of 1974. The question for our consideration is whether the appellant, a dealer in sugar-candy, has to pay sales tax under the Andhra Pradesh General Sales Tax Act, 1957. u/s 6 of the Andhra Pradesh General Sales Tax Act, 1957, sales or purchases of declared goods by a dealer shall be liable to tax at the rate and only at the point of sale or purchase, specified against each in the Third Schedule on his turnover of such sales or purchases for each year. Item 12 in the Third Schedule is "sugar-candy" and it is to be taxed at the point of first sale in the State. Thus, reading Section 6 along with entry 12 in the Third Schedule, the appellant is liable to pay sales tax on the "sugar-candy". But the learned counsel for the appellant, with reference to the definition of "declared goods", argued that "sugar" includes "sugar-candy" and since "sugar" is exempted from the payment of sales tax u/s 8 read with entry 6 in the Fourth Schedule, "sugar-candy" also is exempt from the payment of sales tax. It Is true that Section 2(f) of the Act defines "declared goods" as meaning goods declared u/s 14 of the Central Sales Tax Act, 1956. Section 14 of the Central Sales Tax Act has declared certain goods and "sugar" is one among them.

Clause (viii) of that section refers to "sugar" as defined in item No. 1 of the First Schedule to the Central Excises and Salt Act, 1944. Item No. 1 of the First Schedule to the Central Excises and Salt Act, 1944, reads as follows:

Sugar, produced in a factory ordinarily using power in the course of production of sugar-"sugar" means any form of sugar in which the sucrose content, if expressed as a percentage of the material dried to constant weight at 105° centigrade, would be more than ninety.

2. It is contended that, in view of this definition, "sugar" also includes "sugar-candy". Nevertheless, "sugar" is different from "sugar-candy", though "sugar-candy" is made out of sugar. Different manufacturing process is also involved in making "sugar-candy". The legislature can always pick and choose and say that "sugar-candy" is liable to tax, but not "sugar". Further, when the competency of legislature to tax "sugar-candy" is not questioned, we cannot say that the tax imposed on that article u/s 6 read with item 12 of the Third Schedule is illegal.

3. The fact that "sugar" is not taxed u/s 6 read with item 12 of the Third Schedule will not make the imposition of sales tax on "sugar-candy" illegal.

4. u/s 8 of the Andhra Pradesh General Sales Tax Act, subject to such restrictions and conditions as may be prescribed, including conditions as to licences and licence fees, a dealer who deals in the goods specified in the Fourth Schedule shall be exempt from tax under the Act in respect of such goods. In the Fourth Schedule "sugar" is shown as item 6. The explanation to that schedule says that the expression in item 6 is to have the same meaning assigned to it in the Additional Duties of Excise (Goods of Special Importance) Act, 1957. When we look to that Act, once again, it embodies the definition of "sugar" as mentioned in the First Schedule to the Central Excises and Salt Act. Thus, "sugar" as such is exempt from sales tax. It is argued by the learned counsel for the appellant that in view of the definition in the First Schedule to the Central Excises and Salt Act, "sugar-candy" also is exempt from sales tax u/s 8 of the Andhra Pradesh Sales Tax Act read with entry 6 of the Fourth Schedule. I am not able to agree with this contention. The fact that "sugar" and "sugar-candy" are separately mentioned in different schedules of the Sales Tax Act indicates that the legislature intended to treat them and treated them differently subjecting the one to tax and exempting the other from tax.

5. As rightly observed by Chinnappa Reddy, J., though the only component of "sugar-candy" is "sugar" in common parlance the expressions "sugar" and "sugar-candy" are used to denote substances identifiable as distinct substances and if the expressions "sugar" and "sugar-candy" are understood as they are understood in common parlance and as they were apparently meant to be understood by the legislature, there would be no inconsistency whatever. He further observed that it is the duty of the court to so interpret statutes as to avoid inconsistencies, if possible. I agree with these observations. I hold that "sugar-candy" is liable to payment of sales tax under the Act. Hence I dismiss

this appeal.

Vimadalal, J.

6. Article 14 being inoperative in view of the subsistence of emergency, there is no real question of vires now involved in this writ petition. If two sections of the same Act are inconsistent, inter se, as alleged by the learned Advocate for the appellant, neither of the sections becomes invalid. In such a case, the question would be purely one of construction for which the remedy would not be by way of a writ petition. It is not for the court to advise as to whether the proper procedure would be to make a reference, or what, should be the nature of proceeding in such a case. Suffice it to say, in my opinion, the appellant has misconceived his remedy. With the addition of these observations, I agree with the judgment just delivered by my brother Gangadhara Rao, J.

7. P.C.: Appeal dismissed. In the circumstances of the case, we, however, make no order as to costs of the appeal. Advocate's fee Rs. 100.