

(1960) 06 AP CK 0010
In the Andhra Pradesh High Court
Case No : T.R.C. No. 26 of 1959

The Alembic Distributing Agency	Vs	APPELLANT
The State of Andhra Pradesh		RESPONDENT

Date of Decision : 14-06-1960

Acts Referred:

Citation : (1961) 12 STC 15

Hon'ble Judges : Chandra Reddy, C.J; Sanjeeva Row Nayudu, J

Bench : Division Bench

Advocate : N. Subba Reddy, for the Appellant; The Second Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Chandra Reddy, C.J.—This revision petition., raises the question whether the petitioner is entitled to exemption u/s 4 of the Madras General Sales Tax Act, 1939.

2. The petitioner is a distributor of certain medicinal preparations. In the year 1957-58, his return disclosed a turnover of Rs. 7,57,313-12-0 out of which exemption was claimed on Rs. 2,33,687-0-9 on the ground that excise duty was paid under the Madras Prohibition Act (Madras Act X of 1937). The Commercial Tax Officer accepted the plea of the petitioner and granted the exemption claimed.

3. When the matter came to the notice of the Deputy Commissioner of Commercial Taxes, he cancelled the exemption suo motu after giving the petitioner an opportunity, and called upon him to pay the tax on the said amount.

4. On appeal, this was confirmed by the Sales Tax Appellate Tribunal. The aggrieved assessee has brought this matter in revision to this Court.

5. The only question that is posed in this revision is whether the petitioner paid excise duty on the medicines in respect of which exemption is claimed. If excise

duty was paid on the medicinal preparations, they are not exigible to tax by reason of Section 4 of the Madras General Sales Tax Act. Section 4 in so far as it is relevant for the enquiry, enacts:

The provisions of this Act shall not apply to the sale of electrical energy, motor spirit as defined in the Madras Sales of Motor Spirit Taxation Act, 1939, taxed tobacco as defined in Section 2, Clause 13, of the Madras Tobacco (Taxation of Sales and Registration) Act, 1953, (Madras Act IV of 1953) and any goods on which duty is or may be levied under the Madras Abkari Act, 1886, the Madras Prohibition Act, 1937, or the Opium Act, 1878, and to the sale or purchase of goods to which the Andhra General Purchase Tax Act, 1956, applies.

* * * *

6. By virtue of this section, goods would not be liable to tax only if duty was levied under the Madras Abkari Act, 1886, or the Madras Prohibition Act, 1937. Therefore, before the claim for exemption could be justified, it should be established that duty was paid on the goods.

7. We will now turn to the relevant provisions of the Madras Prohibition Act, 1937. Section 16, omitting the portions not relevant for the present enquiry, reads:

The State Government may, by notification and subject to such conditions as they think fit, exempt any specified liquor or intoxicating drug or article containing such liquor or drug from the observance of all or any of the provisions of this Act on the ground that such liquor, drug or article is required for a medicinal, scientific, industrial or such like purpose.

* * * * 8. In exercise of the power conferred by this section, the State Government issued a notification in 1938. Clause (2) of that notification recites :

... the State Government are hereby pleased-

(1) to exempt medicinal preparations, culinary, aerated water and other flavouring essences, extracts and colourings and perfumes and toilet preparations containing spirit, from all the provisions of the said Act, subject to the following conditions, namely :-

(2) that duty on the spirit contained in such preparations shall whether preparations are manufactured within the area in which the Act is in force or are manufactured elsewhere in India outside the Province of Madras and imported into such area, be paid at the rates specified below, namely :-

9. The rates are specified under that clause and it is not necessary for us to enumerate them.

10. It is manifest that under this clause duty is leviable only on the spirituous content of the preparation and not on the whole preparations as net. That is, the medicine as such is not subject to excise duty; it is only that part of the medicine

which represents the spirit that attracts Clause (2). That being so, the assessee would not have paid excise duty on the preparations as such but only on the spirituous content of the preparations. Therefore, the total turnover in regard to which exemption was claimed could not come within the purview of Section 4 of the Madras General Sales Tax Act. It follows that the order of the Deputy Commissioner of Commercial Taxes setting aside that of the Commercial Tax Officer is correct.

11. It was lastly urged by Sri Subba Reddy that exemption should be granted at least in regard to the spirituous content of the liquor. But this point was not taken either before the Deputy Commissioner of Commercial Taxes or before the Sales Tax Appellate Tribunal or in the revision case. We have no means of judging the actual spirituous content of these medicines. No effect can, therefore, be given by us to this contention.

12. In the result, the revision case is dismissed with costs. Advocate's fee is fixed at Rs. 100.