(1988) 06 AP CK 0005

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 112 of 1985

The State of Andhra Pradesh APPELLANT

Vs

Mayur Crystal Palace RESPONDENT

Date of Decision : 23-06-1988

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 14(4)
Income Tax Act, 1961 — Section 147

Citation : (1989) 72 STC 147

Hon'ble Judges : Bhaskara Rao, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : Government Pleader for Commercial Taxes, for the Appellant; A.V.S. Ramakrishnaiah, for the Respondent

Judgement

B.P. Jeevan Reddy, J.—The main question that arises in this tax revision case is whether glass chandeliers can be brought within entry 123 of the First Schedule to the Andhra Pradesh General Sales Tax Act as it stood at the relevant time. The assessment year concerned herein is 1979-80. At that time, entry 123 of the First Schedule read as follows :

"123. Glass and glassware, that is to say :-

(i) sheet glass and plate At the point first 6 paise in glass; sale in the State. the rupee." (ii) mirrors; (iii) laboratory glassware; (iv) glass shells, glass globes and chimneys for lamps and lantern; (v) other glassware including table-ware.

2. The Commercial Tax Officer treated the chandeli ers as general goods in the first instance and levied tax accordingly. Subsequently he reopened the assessment u/s 14(4) of the Act and taxed the chandeliers under entry 123.

3. The Tribunal has allowed the appeal on two grounds. Firstly it held that this was not a case where the power of reopening conferred upon the authority by section 14(4) of the Act was available. This view was expressed following the decision of this Court in Fatechand and Sons v. Commissioner Tax Officer [1983]

54 STC 166. Secondly the Tribunal held that the chandeliers cannot be brought within entry 123 of the First Schedule as it stood then. We shall deal with the second ground first.

4. The chandeliers are no doubt made of glass but it would be difficult to call them "glassware". Entry 123 as it stood then was not an inclusive definition as it became after the amendment in 1983. As it stood then, the entry was restrictive in its application which is evident from the words "that is to say" occurring after the "glass and glassware". It may also be seen that chandeliers cannot be brought within the sheet glass or plate glass, mirrors, laboratory glassware or glass shells, glass globes and chimneys for lamps and lanterns mentioned under item (i) to (iv) in the entry. If at all it must fall within item (v) "other glassware including table-ware" but having regard to the nature, use and value of the chandeliers, we find it difficult to say that it is "glassware". As explained by the Supreme Court in Atul Glass Industries (Pvt.) Ltd. Vs. Collector of Central Excise, which is no doubt a case arising under the Central Excise Act, glassware would mean merchandise made of glass and understood in its primary sense as a glass article. By way of illustration, the Supreme Court pointed out that a glass bowl, a glass vase, a glass tumbler and a glass table-top will be all articles in which the primary component is glass and can be called glassware. Applying the test of commercial parlance or common parlance, as it is called, we find it difficult to say that chandelier is "glassware". No one identifies the chandelier as a glassware. It is merely a decorative article, ornamental in nature and not of common use because of its high value. We are therefore in agreement with the Tribunal that chandelier did not fall within the entry 123 as it stood during the relevant assessment year.

5. The learned Government Pleader then argued that the opinion of the Tribunal in this case that the power of reopening u/s 14(4) of the Act was not available is not sustainable in law. He submits that the decision of this Court in Fatechand and Sons v. Commercial Tax Officer [1983] 54 STC 166 is ex facie inconsistent with the language of section 14(4) of the Act and that he learned Judges have incorrectly applied the principle obtaining u/s 147 of the Income Tax Act, 1961 to a case arising u/s 14(4) of the Andhra Pradesh General Sales Tax Act. The learned counsel pointed out that the restrictions which are provided u/s 147 of the Income Tax Act, 1961, are not provided in sub-section (4) of section 14. He relied upon the decisions of the Madras High Court and Kerala High Court rendered with the reference to similar language in Madras and Kerala Acts. viz., Yercaud Coffee Curing Works Ltd. Vs. The State of Tamil Nadu, , F.K. Hasheeb and Co. Vs. The State of Madras, , East India Corporation Ltd. Vs. The State of Madras, , State of Madras v. Louis Dreyfus and Company Ltd. [1955] 6 STC 318 (Mad.) [FB] and R.S. Narayana Shenoi Vs. State of Kerala, in support of his contention. Undoubtedly there is good amount of force in this contention of the learned Government Pleader but, in view of our opinion on the second question, we do not think it necessary to go into this aspect in this case.

6. This tax revision case accordingly fails and is dismissed. No costs. Advocate''s fee Rs. 150.

7. Petition dismissed.

