

(1974) 07 AP CK 0017

In the Andhra Pradesh High Court

Case No : T.R.C. No. 88 of 1972 and W.P. No. 439 of 1974

The State of Andhra Pradesh

APPELLANT

Vs

The Associated Tanners

RESPONDENT

Date of Decision : 15-07-1974

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 15, 6, 8, 9
Constitution of India, 1950 — Article 304

Citation : (1975) 36 STC 32

Hon'ble Judges : Madhava Rao, J;A. Sambasiva Rao, J

Bench : Division Bench

Advocate : The Government Pleader for Commercial Taxes in T.R.C. No. 88 of 1972 and W.V.V. Sundara Rao, for I. Venkatnarayana and V. Jagannatha Rao, in W.P. No. 439 of 1974, for the Appellant; The Government Pleader for Commercial Taxes in W.P. No. 439 of 1974 and W.V.V. Sundara Rao, for I. Venkatnarayana and V. Jagannatha Rao, in T.R.C. No. 88 of 1972, for the Respondent

Final Decision : Allowed

Judgement

A. Sambasiva Rao, J.—These two are connected matters and are concerned with recovery of Central sales tax on tanned hides and skins. The respondent in the tax revision case is the petitioner in the writ petition. The principal question that arises in both the matters is whether dressed hides and skins, which have been tanned out of hides and skins, which had suffered tax under the State sales tax law are generally exempt from further tax so as to attract the nil rate envisaged by Section 8(2A) of the Central Sales Tax Act, 1956. While the assessment which is in question in the tax revision case is for the year 1968-69, the writ petition is about the assessment of the year 1972-73.

2. The dealer in this case is M/s. The Associated Tanners, Vizianaga-ram. They deal in hides and skins besides being tanners. They registered themselves as dealers both under the Andhra Pradesh General Sales Tax Act, 1957, as well as the Central Sales Tax Act, 1956. For the year 1968-69 it reported a total turnover of Rs. 17,59,122.06 and claimed exemption on the entire turnover. The assessing

authority, however, found the total turnover to be Rs. 28,30,300 and levied assessment on a net turnover of Rs. 17,59,122.06 after allowing deduction on the balance of the turnover. They purchase raw hides and skins not only from within the State of Andhra Pradesh but also from places outside the State and after tanning them, sell the dressed hides and skins within the State as well as in the course of inter-State trade. They have not, however, maintained separate accounts to identify the dressed hides and skins obtained from raw hides and skins purchased by them within the State, purchased from outside the State and from out of the opening stock at the commencement of the year. They paid tax under the State law on their turnover of raw hides and skins purchased within the State, but in respect of those imported from outside, they have not paid tax. The assessing authority allowed exemption on the turnover relating to purchases of raw hides and skins made outside the State,

3. The dispute mainly revolves round the turnover of Rs. 17,59,122.06, which represents the entire turnover relating to inter-State sales of dressed hides and skins. The dealers argued before the assessing authority that the sales of dressed hides and skins, which have already suffered tax as raw hides and skins are exempt from tax generally and, consequently, the tax payable under the Central law is nil by reason of the provisions of Section 8(2A) of the Central Act. This contention appears to have been raised for the first time before the first appellate authority before whom the dealers carried the assessing authority's decision in appeal. The Assistant Commissioner overruled the objection. So, there was a further appeal to the Sales Tax Appellate Tribunal. A majority of the Tribunal held that under the Andhra Pradesh sales tax law, sales or purchases of dressed hides and skins that had already suffered tax in the untanned condition are generally exempt from tax and not merely in specified circumstances or subject to specified conditions and, therefore, the tax payable in respect of inter-State sales of those goods shall be nil under the provisions of Sub-section (2A) of Section 8 of the Central Act. After expressing this view of the legal position, the majority remanded the matter to the assessing authority to determine the value and quantity of dressed hides and skins that had suffered tax under the State law from out of the goods involved in the disputed turnover, which would be entitled to the benefit of Section 8(2A) of the Central Act. The departmental member disagreed with this view and held that the sales of such goods in the course of inter-State trade are not exempt from the Central tax and dismissed the appeal. The revenue filed the revision case against this majority view, which prevails as the decision of the Tribunal.

4. It is not specifically known what has happened during the subsequent years. But the Commercial Tax Officer, Visakhapatnam, initiated the assessment proceedings including the transactions of inter-State sales of dressed goods produced through raw hides and skins, which had been purchased within the State and in respect of which State tax had been paid. The dealers have filed the writ petition seeking a writ of mandamus or any other appropriate writ, restraining the Commercial Tax Officer from taking further proceedings in

pursuance of the aforesaid notice in so far as the turnover of dressed hides and skins, which have suffered tax at the raw stage.

5. The question that has to be answered, therefore, is whether the benefit of nil rate afforded by Sub-section (2A) of Section 8 of the Central law is available to dressed hides and skins which have been tanned out of hides and skins which had suffered tax under the State law. That sub-section has an explanation and both of them, as they were before the amendment of 1972, read as follows:

Notwithstanding anything contained in Sub-section (1) or Sub-section (2), if under the sales tax law of the appropriate State, the sale or purchase, as the case may be, of any goods by a dealer is exempt from tax generally or is subject to tax generally at a rate which is lower than three per cent (whether called a tax or fee or by any other name) the tax payable under this Act on his turnover in so far as the turnover or any part thereof relates to the sale of such goods shall be nil or, as the case may be, shall be calculated at the lower rate.

Explanation.-For the purposes of this sub-section a sale or purchase of goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that law it is exempt only in specified circumstances or under specified conditions or in relation to which the tax is levied at specified stages or otherwise than with reference to the turnover of the goods.

6. What is claimed by the assessee in this case is nil rate on the ground that the goods are exempt from tax generally. What is "exempt from tax generally" under the State law is explained in the explanation. To understand the meaning and scope of that expression in the subsection, the explanation will have to be looked into. If any of the circumstances mentioned in the explanation exists in a particular case, be it sale or purchase, the transaction is not deemed to be exempt from tax generally under the State law. Those circumstances are : (1) The transaction is exempt only in specified circumstances. (2) It is exempt only under specified conditions. (3) If it is in relation to which tax is levied at specified stages. (4) If in relation to which tax is levied otherwise than with reference to the turnover of the goods. In the light of these provisions, it will have to be now examined whether the sale of the goods in question is exempt from tax generally under the State law or any one of the circumstances mentioned in the explanation exists in the nature of transactions with which we are now concerned. Hides and skins, both untanned and tanned, are included in item 9 of the Third Schedule to the Andhra Pradesh General Sales Tax Act. That schedule enumerates declared goods in respect of which a single point tax only is leviable u/s 6. This title to the schedule is significant in that it indicates that all the goods listed in the schedule are subjected to a single point tax. That should necessarily imply that those goods are not generally exempt from tax under the State law. Section 6 of the State Act in respect of which the Third Schedule is included relates to tax in respect of declared goods. It declares that sales or purchases of declared goods are liable to tax at the point of sale or purchase at the rate

specified in the Third Schedule. The language and intendment of the section are clear in providing for levy of tax on declared goods which includes hides and skins both tanned and untanned. It is, therefore, difficult to say that hides and skins are generally exempt from tax under the State law. The proviso to Section 6 throws some more light on the problem. It says that where a tax has been levied on declared goods and if they are sold in the course of inter-State trade or commerce, the tax so levied shall be refunded. If goods are generally exempt from tax under the State law no question of refund would arise. Something is refunded only when it has been levied and collected. Levy and collection cannot occur in respect of goods which are generally exempt from tax. This also demonstrates that hides and skins are not generally exempt from tax.

7. Let us compare this with the Fourth Schedule to the Act which gives the list of "goods exempted from tax u/s 8". Section 8 of the State law declares that a dealer who deals in goods specified in the Fourth Schedule shall be exempt from tax under the Act in respect of such goods. Likewise Section 9 empowers the State Government to notify exemptions and deductions of tax. Thus, the law postulates goods which are exempt from tax or which can be made exempt from tax by a Government notification. Such goods can be broadly categorised as goods which are generally exempt from tax. This is in telling contrast with Section 6 and the Third Schedule. This study of contrasts reinforces our inference that goods mentioned in the Third Schedule are not generally exempt from tax.

8. A brief reference to the relevant provisions of the Central law would also be useful. Section 14 of that Act occurs in Chapter IV, the heading of which is "goods of special importance in inter-State trade or commerce". Section 14 lists such goods. Item (iii) of Section 14 is "hides and skins, whether in a raw or dressed state". Thus, dressed or undressed hides and skins are given special importance in inter-State trade or commerce. Section 15, which immediately follows Section 14 and occurs in the same Chapter IV, provides for restrictions and conditions in regard to tax on sale or purchase of declared goods within a State. It says :

Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely :-

(a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed three per cent of the sale or purchase price thereof, and such tax shall not be levied at more than one stage ;

(b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, the tax so levied shall be refunded to such person in such manner and subject to such conditions as may be provided in any law in force in that State.

9. Section 15(b) enjoins that the tax which has been levied under the State law

on any declared goods inside the State shall be refunded to the dealer if the goods are sold in the course of inter-State trade or commerce. This is similar to the proviso to Section 6 of the State Act. What we have observed while noticing that proviso would apply to Section 15(b) as well. Refund is contemplated only when certain amount has been collected. Section 9(4) of the Central Act lays down that the proceeds of the tax levied and collected under the Central law in any State shall be assigned to that State. It thus transpired that the taxes so collected both under the State as well as the Central law are the revenues of the State. Section 15(a) states that tax on declared goods shall not be levied at more than one stage. They are thus subjected only to single point taxation. If Central tax is also exigible on them on account of inter-State trade or commerce, the tax levied under the State law is refunded to the dealer. These various provisions thus demonstrate that declared goods, which include tanned and untanned hides and skins, are not intended to be generally exempt from tax.

10. Here we may also notice some recent amendments made in the Central as well as the State laws. In *State of Mysore v. Yaddalam Lakshminarasimhiah Setty and Sons* [1965] 16 S.T.C. 231 (S.C.), the Supreme Court construed the words "levied and collected" and "in the manner" occurring in Section 9(1) of the Central law as meaning that the assessment should be made just like it is made under the State law and, consequently, Section 9(1) of the Central Act had not made a departure "in the manner of levy of tax on specified goods which were taxed only at a single point under the State Act. To get over the legal position thus ensured, in the first place the President of India promulgated an Ordinance in 1969 and later the Parliament enacted an Amendment Act in the same year, whereunder Section 6(1A) was introduced in the Central Act. Newly incorporated Sub-section (1A) declared that a dealer is liable to pay tax under the Central law on sale of goods in the course of inter-State trade or commerce, notwithstanding the fact that no tax would have been leviable either on the seller or purchaser under the State law, if that sale has taken place inside that State. The sum and substance of this provision is that even if no tax can be levied under the State law, none the less a dealer is liable to pay Central tax if he sells the goods in the course of inter-State trade or commerce. In view of the newly introduced Sub-section (1A) of Section 6, Sub-section (2A) of Section 8 has been recast under the Central Sales Tax (Amendment) Act, 1972. The substituted section, which is now in force, is as follows :

Notwithstanding anything contained in Sub-section (1A) of Section 6 or Sub-section (1) or Sub-section (2) of this section, the tax payable under this Act by a dealer on his turnover in so far as the turnover or any part thereof relates to the sale of any goods, the sale or, as the case may be, the purchase of which, is under the sales tax law of the appropriate State, exempt from tax generally or subject to tax generally at a rate which is lower than three per cent (whether called a tax or fee or by any other name) shall be nil or, as the case may be, shall be calculated at the lower rate.

Explanation.-For the purposes of this sub-section a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that law the sale or purchase of such goods is exempt only in specified circumstances or under specified conditions or the tax is levied on the sale or purchase of such goods at specified stages or otherwise than with reference to the turnover of the goods.

11. Has this change brought about any significant alteration in the legal situation ? By adding in the non obstante clause Sub-section (1A) of Section 6, which had been introduced in 1969, the relief that has to be given u/s 8(2A) will have to be decided dehors Section 6(1A). The position still remains that only those transactions which are exempt from State tax generally will be entitled to the nil rate. The explanation also has not undergone any material alteration. Its impact on the main provision continues to be the same. If anything the newly substituted Sub-section (2A) brings out more clearly that an exemption or lower rate of levy under the State sales tax law would be available in respect of an inter-State sale of goods only if such exemption or lower levy is available generally with reference to such goods or such class of goods under the State sales tax law.

12. To complete our consideration of the changes in the law so far effected, we may also refer to another amendment made by the Central Amendment Act, 1972, which is in respect of Section 15(b). The courts have construed the word "levied" in Section 15(b). as connoting merely the act of assessment and not including the actual payment of the tax imposed. The Parliament thought that the return of the tax to the assessee contemplated by Clause (b) can be made only when the tax imposed has been paid and, consequently, added the words "and tax has been paid under this Act in respect of the sale of such goods in the course of inter-State trade or commerce, the tax levied under such law". In the place of refund the word "reimbursed" has been substituted. Exactly on the same lines the proviso in Section 6 of the Andhra Pradesh State law was amended by the Amendment Act of 1974.

13. The foregoing discussion, unaided by decided cases, leads to the conclusion that hides and skins, tanned or untanned, are not generally exempt from tax under the Andhra Pradesh State law and are not, in the result, entitled to the benefit of nil tax given by Section 8(2A).

14. There is yet the contention of the learned Government Pleader that even if it is understood that hides and skins are exempt from tax, such exemption is made available only in specified circumstances or under specified conditions. According to him, specified circumstance or specified condition in so far as hides and skins are concerned is stated in item 9(b) of the Third Schedule to the State Act and, that is, that they should not have been subjected to tax as untanned hides and skins. We do see considerable force in this submission. As we have pointed out, hides and skins are placed in the Third Schedule, which enumerates declared goods in respect of which only a single point tax is leviable u/s 6. This heading to

the schedule postulates that all the goods mentioned therein are liable to be subjected to a single point tax only. The very heading of item 9 is in general terms and it is hides and skins. It means that hides and skins are also liable to be levied a single point tax only. Since the very purpose of the schedule is to prescribe the rate of taxation at a single point, item 9 fixes three paise in the rupee on untanned hides and skins when purchased by the tanner in the State at the point of purchase by the tanner, etc. Likewise, tanned hides and skins are also subjected to the rate of taxation at three paise in the rupee when purchased by a manufacturer in the State at the point of purchase by the manufacturer, etc. Thus, single point tax is exigible on tanned hides and skins also. Only if they have already been subjected to tax as untanned hides and skins no further tax is exigible on tanned hides and skins. This exception is included for enforcing the principle of Section 6 that tax can be levied on declared goods only at a single point. In other words, tanned hides and skins cannot be subjected to tax in the specified circumstances or under the specified conditions that they have been subjected to tax as untanned hides and skins. Thus the exemption given to tanned hides and skins falls squarely within the ambit of explanation to Section 8(2A). With the result, that sale or purchase of tanned hides and skins in the course of inter-State trade cannot be said to be exempt from tax generally under the State law. We thus reach the same conclusion we have already arrived at by examining the legal position with the aid of the explanation also.

15. At this stage we must take note of a strenuous contention put forward by Sri Sundara Rao, the learned counsel for the assessee, in regard to the construction of item 9(b) in the Third Schedule of the State Act. Drawing support largely from Maxwell and other learned authors, Sri Sundara Rao contends that while construing a statutory provision any omissions should not be inferred. We have no dispute in regard to this principle of construction. But, then have we introduced any omission in item 9(b) before we have construed the law as we have done ? It has been held that item 9(b) is not discriminatory and does not offend Article 304(a) of the Constitution (vide *Associated Tanners v. Commercial Tax Officer* [1974] 33 S.T.C. 588).

16. While enacting the Third Schedule including item 9(b), the State Legislature has kept in view the restrictions and conditions in regard to tax on sale or purchase of goods within a State imposed u/s 15 of the Central Act. Therefore, the various items in the Third Schedule will have to be understood in the light of Section 15 of the Central law. Section 15 says that if any tax under the State law has been collected from the dealer on declared goods in respect of any transaction inside the State, the dealer shall be reimbursed with the amount of tax, which has been thus collected from him. Item 9(b) provides for the levy of a tax at the rate of three paise in the rupee on tanned hides and skins with the exception that there will be no further tax if those dressed goods have already been subjected to tax in their raw shape. It is the contention of the learned counsel for the respondent that there is nothing in item 9 which authorises levy on tanned goods at any stage and at any particular rate. If such levy is read into

item 9, it would be tantamount to importing something which is not there and to offending thereby the provisions of Section 15 of the Central Act. The fallacy in this argument is patent. Item 9(b) does authorise levy of tax on tanned goods at the rate of three paise in the rupee when they are purchased by a manufacturer in the State at the point of purchase, etc. What is contained in the brackets is only an exception to the general rule. It is, therefore, futile to argue that levy on tanned goods has to be imported into item 9. It is already there and no import is necessary.

17. Sri Sundara Rao also submits that item 9(b) does not contain an exception and only one variety of tanned goods are made liable to tax. The other variety, viz., those which have already suffered tax as untanned hides and skins form a distinct category and do not constitute an exception to the taxation prescribed under item 9(b). Sri Jagannatha Rao, appearing for the assessee-petitioner in W. P. No. 439 of 1974, also argues that once hides and skins are tanned they become different goods and tanned goods, which have already been subjected to tax, are not brought within the net of taxation. In *Hajee Abdul Shukoor and Co. v. State of Madras* [1964] 15 S.T.C. 719 (S.C.), the Supreme Court ruled, on a review of the previous case law, that hides and skins and dressed hides and skins constitute different commodities or merchandise and can be treated as different goods for the purpose of the Act. This view was followed by a Division Bench of this Court in *Rafeeq Ahmed & Co. v. State of Andhra Pradesh* [1969] 24 S.T.C. 430. Raw hides and skins and dressed hides and skins may constitute different commodities or merchandise and they can thus be treated as different goods for the purpose of the State law. We may here refer to the decision of Obul Reddi, J. (as he then was), and Venkateswara Rao, J., dated 10th February, 1971, in T. R. C. No. 11 of 1969, wherein the learned Judges observed that though the State Act classifies hides and skins into two categories, raw and tanned, the Central Act does not make any such distinction and treats both varieties as being of special importance in inter-State trade and commerce. Even if the two are treated as different categories under the State law, the Central law treats them both as goods of special importance for the purpose of inter-State trade and commerce and treat them alike. If a particular transaction comes within the scope of Section 8(2A) of that law, then it enjoys the benefit of nil tax or reduced rate, as the case may be. So, we are unable to accede to the abovesaid argument of the two learned counsel.

18. Tracing the history of taxation of hides and skins under the Madras General Sales Tax Act and the Rules made thereunder, Sri Sundara Rao points out that tanned hides and skins have always been exempted from tax whenever they had been subjected to tax in their undressed condition. He refers to *Firm A.T.B. Mehtab Majid and Co. v. State of Madras* [1963] 14 S.T.C. 355 (S.C.), *Hajee Abdul Shukoor and Co. v. State of Madras* [1964] 15 S.T.C. 719 (S.C.), *Hajee Abdul Shukoor and Co. v. Special Deputy Commercial Tax Officer* [1969] 23 S.T.C. 455, and *Sadak Thamby and Co. v. Appellate Assistant Commissioner of Commercial Taxes* [1969] 24 S.T.C. 468. Then he points out that neither the

State law nor the Central law has brought about any change in respect of this category of goods. Since no State tax is leviable on such hides and skins, no Central tax is exigible either. Thus, it can be safely said that they are generally exempt from tax as postulated by Section 8(2A). In his submission, the explanation has no application because the exemption is not given in any specified circumstances or under specified conditions. The same point is stated in another form by Sri Jagannatha Rao in W. P. No. 439 of 1974. The object of the sales tax law is to tax declared goods only at one point and not to tax them twice. Section 8(2) of the Central Act provides that same rate should be levied as under the State law. Since no tax can be levied on tanned hides and skins which have already suffered tax, it must be held that they are generally exempt from tax, thus coming within the scope of Section 8(2A). We have already considered the scope of the various provisions and come to the conclusion that hides and skins are not generally exempt and are caught in the net of taxation. It is true that the law forbids retention of two taxes on declared goods. That is why reimbursement is provided for, but that is only after levy and collection. The remedy of the dealer in such transactions is only to claim reimbursement after he has paid the tax and not to claim nil rate. The history of taxation as pointed out by Sri Sundara Rao does not help his contention at all. The sales tax law has undergone many changes and we will have to consider whether a particular transaction or nature of transactions are exempt from taxation in the light of the provisions that obtain now and govern the said transactions. The material provisions catch the transactions of the nature, which we are dealing with, in the net of taxation and the only remedy to the assessee is to seek reimbursement.

19. The Tribunal in its majority opinion took the view that the State Legislature had for the purpose of taxation not only chosen to treat tanned hides and skins as a commodity different from untanned hides and skins, but had further chosen to treat tanned hides and skins that had been subjected to tax in the untanned state as a commodity separate and distinct from tanned hides and skins that had not been subjected to tax in the raw state. For that reason, the majority thought that transactions of tanned hides and skins that had already suffered tax in their untanned state are generally exempt from tax and that there is no specified circumstances or conditions. We have already adverted to this contention as put forward by the learned counsel for the assessee. In our view, the line of thought expressed by the majority is not compatible with the language and spirit of Section 8(2A) of the Central Act read with the explanation.

20. Sri Sundara Rao also endeavours to demonstrate that if nil tax is not enforced on such transactions there will be any amount of hostile discrimination. He rests this submission on the circumstances that the rates of tax levied by various States differ from each other and if they are once again obliged to pay tax under the Central law as well, the transactions in the States where higher rates prevail would be adversely discriminated. This contention ignores the fact that under both the State law and Central law the State can retain only one tax and the tax levied under the State law will have to be refunded to the dealer.

There is thus no hostile discrimination.

21. We will now refer to a few cases, which have a bearing on the question as to what is meant by the words "generally exempt", and which have considered the effect of the newly introduced amendments. In *Basappa and Brothers v. Deputy Commissioner of Commercial Taxes* [1971] 27 S.T.C. 241, a Division Bench of the Mysore High Court considered this question. That was even after (sic) the amendment to Section 8(2A) introduced by the 1972 Amendment Act. In that case, a firm bought cotton seeds inside the State and sold them in the course of inter-State trade. The firm was assessed to tax by the Commercial Tax Officer under the Central Sales Tax Act. But, following *Yaddalam's* case [1965] 16 S.T.C. 231 (S.C.), the Deputy Commissioner set aside the assessment. Thereafter, the Commercial Tax Officer refunded to the petitioner the tax that had been collected. When the amendment of 1969 was introduced the officer issued a notice of demand demanding from the firm the payment of tax amount refunded to it. That notice of demand was challenged. The Mysore Legislature also introduced some corresponding amendments in the State law. One of the contentions raised before the High Court was, notwithstanding the amendment of the Act by the Central Act of 1969 all sales by a dealer in the Mysore State effected in the course of inter-State trade or commerce were exempt from tax by virtue of Section 8(2A) of the Central law. Repelling this contention, the court stated the legal position vis-a-vis Section 8(2A) in the following terms at page 257 :

Sale or purchase of goods is said to be exempt from tax generally where the transaction of sale of goods is not taxed either at the sale point or at the purchase point at any stage or under any circumstances.

22. Continuing their consideration of the question, the learned Judges further observed at the same page :

In our opinion, the object of Sub-section (2A) of Section 8 is to exempt transactions of sale of any goods if they are wholly exempt from tax under the sales tax law of the appropriate State and to make the said sales chargeable at lower rates, where under the sales tax law of the State, the sale transactions are chargeable to tax at lower rates. Where goods are taxable at the point of purchase under the sales tax law of the appropriate State, the sale is not exempt from tax generally or where the goods are taxable at the point of sale, the transaction of purchase is not exempt from tax generally. The plain meaning of the said sub-section is that, if under the sales tax law of the appropriate State no tax is levied either at the point of sale or at the point of purchase at any stage, the tax under the Act shall be nil.

23. This view accords with the opinion we have expressed above.

24. The Punjab and Haryana High Court agreed with this conclusion in *State v. Indian Aluminium Cable Ltd.* [1974] 33 S.T.C. 152. There the assessee who had sold electric poles and cables in the course of inter-State trade, claimed

exemption from the Central sales tax by reason of the provisions of Section 5(2)(a)(iv) of the Punjab General Sales Tax Act, 1948, read with Section 8(2A) of the Central Act. u/s 5(2)(a)(iv) of the State Act, sales to any undertaking supplying electrical energy to the public under a licence or sanction granted or deemed to have been granted under the Indian Electricity Act, 1910, of goods for use by it in the generation or distribution of such energy have, to be deducted from the gross turnover. However, Section 6 of the State Act provided that no tax shall be payable on sale of certain goods specified in the first column of Schedule B. Dealing with the claim for application of Section 8(2A) to the sale of the electric poles and cables in the course of inter-State trade, the learned Judges repelled the contention for the State that the provisions of Section 8(2A) of the Central Act are restricted to Section 6 of the State law and do not cover Section 5 of the State law. However, they proceeded to consider the scope of the explanation and the expression therein "exempt only in specified circumstances or under specified conditions". Following the decision in *Commissioner of Sales Tax v. Kapoor Dori Niwar and Co.* [1968] 22 S.T.C. 152, it was held that the said expression in the explanation to Sub-section (2A) means such circumstances or conditions the non-existence or non-performance of which precludes the grant of exemption ; so that if those circumstances do not exist or those conditions are not performed then the sales of goods cannot be exempted from tax even if they are effected by a class of dealers to whom exemption is granted and during the period for which exemption is granted. Then the Judges referred to the Madras decision in *M.A. Abbas and Co. v. State of Madras* [1962] 13 S.T.C. 433, where it was observed :

To our minds, the correct interpretation of this expression is that the goods should be totally exempt from tax before similar exemption from the levy of Central sales tax can become available ; but where the exemption from taxation is conferred on conditions such as that the turnover of a dealer under the local sales tax law is below the minimum prescribed, or that the tax will attach to a transaction only in certain circumstances, there is no exemption from tax "generally".

25. A reference was also made to an observation of the Kerala High Court in *Krishna Iyer v. State of Kerala* [1962] 13 S.T.C. 838, that where in order to get the benefit of an exemption a licence has to be obtained under the State Act, it cannot be said that there is a general exemption from tax as contemplated by Section 8(2A) and the explanation to that sub-section. The learned Judges of the Punjab and Haryana High Court, following these decisions, expressed the view that the provisions of Section 8(2A) of the Central Act did not apply to the facts of the case. They also repelled the contention of the learned counsel for the assessee that Section 5(2)(a)(iv) of the State Act docs not lay down any specified circumstances or conditions, but is merely descriptive of the persons who purchase the goods. Rejecting this contention, it was observed that the exemption cannot be said to be granted generally, because there can be undertakings doing the very job and buying poles or cables. This decision clearly

supports our view.

26. We may also usefully refer to the decision of Obul Reddi, J., as he then was, and Venkateswara Rao, J., dated 10th February, 1971, in T. R. C. No. 11 of 1969, which we have already noticed. Dealing with an objection to a claim for refund of the tax in respect of inter-State sales of tanned hides and skins on the ground that they are of a different category from undressed hides and skins, the Division Bench observed :

We are unable to agree with the construction put upon by the Government Pleader for the reason that item (iii) of Section 14 does not classify hides and skins into two classes, as both tanned and untanned hides and skins are included in this item. Section 15 which enjoins upon the State to refund does not make any such distinction between raw hides and tanned hides. All that is required is if hides and skins whether in raw condition or dressed state suffered tax under the State law and if such goods are sold in the course of inter-State trade or commerce, then the tax so levied on the goods shall be subject to refund in the manner provided subject to such conditions as may be imposed by the State. Though the State Act classifies hides and skins into two categories, raw and tanned, the Central Act does not make any such distinction as the goods, hides and skins, whether in raw or dressed state, are of special importance in inter-State trade and commerce. It is with a view to promote inter-State trade and commerce that this benefit is sought to be given to one who has paid tax under the State law in respect of hides and skins whether they were exported in raw state or exported after they were tanned or dressed....

If the State, as may be seen from item 9 of Schedule III, has classified hides and skins into two categories, (a) raw hides and skins and (b) tanned hides and skins, it is for the purpose of collection of tax under the State law, and that classification has no relevancy when a dealer asks for relief invoking the provisions of Sections 14 and 15 of the Central Sales Tax Act read with the proviso to Section 6 of the A. P. G. S. T. Act.

27. In the result, the learned Judges held that the dealer was entitled to refund of the tax paid under the State law.

28. Sri Sundara Rao in his turn refers to two cases in 22 Sales Tax Cases. The first of them is that of the Madhya Pradesh High Court in Commissioner of Sales Tax v. Kapoor Dori Niwar and Co. [1968] 22 S.T.C. 152 That was, however, a case where the State Government issued a notification exempting from the payment of sales tax for a period of one year on sales of niwar by a dealer and the period of exemption was later on extended up to 31st March, 1963. The assessee consequently claimed exemption from tax u/s 8(2A). The court upheld this contention in view of the fact that sales of niwar were exempt from tax generally by virtue of the notification. In the course of the discussion, the learned Judges explained the ambit of the explanation to Sub-section (2A) saying that there should be, in order to come within the scope of general exemption,

circumstances or conditions, the non-existence or non-performance of which precludes the grant of exemption ; so that if those circumstances do not exist or those conditions are not performed, then the sales of goods cannot be exempted from tax even if they are effected by a class of dealers to whom exemption is granted and during the period for which exemption is granted. Since there was a clear notification in this case totally exempting the particular goods from taxation, the conclusion arrived in this decision does not help the assessee, who is before us. We may also point out that this is the decision referred to by the Punjab and Haryana High Court in *State v. Indian Aluminium Cable Ltd.* [1974] 33 S.T.C. 152.

29. The other case is *Sri Krishna Coconut Co. v. Commercial Tax Officer* [1968] 22 S.T.C. 404, which is that of a Division Bench of this Court. That relates to tax on watery coconuts. Jaganmohan Reddy, C. J., as he then was, speaking for the court observed at page 409 that:

...what Sub-section (2A) categorically states is that the tax payable under the Act is either nil or, as the case may be, calculated at a lower rate and it is only for the purpose of determining the rate of tax that the explanation was inserted to determine what is exempt and what is not. This provision, in our view, has nothing to do with Section 9 read with Section 9(3) on which the decision of the Supreme Court rests. (This decision of the Supreme Court referred to here is the *Yaddalam's* case [1965] 16 S.T.C. 231 (S.C.) on which the learned counsel for the assessee relied.) This decision, as we stated earlier, clearly lays down that the levy under the Central Act is referable to the levy under the State Act, so that if under a State Act, the levy has to be made in a particular manner, that will also have to be made in the same manner for the purposes of the Central Sales Tax Act.

30. It is thus patent that the learned Judges, while deciding the case, were largely relying on *Yaddalam's* case [1965] 16 S.T.C. 231 (S.C.), the effect of which was nullified by the subsequent amendments. Further, in that case there was an averment that the assessee had purchased watery coconuts from registered dealers in which case the learned Judges held that he would not be liable to tax because he was not the first seller. For these reasons, we do not think that this decision would advance the contention of the assessee before us.

31. For the aforesaid reasons, we are of the opinion that the majority view of the Tribunal holding that the tanned hides and skins now sought to be assessed are generally exempt from tax is not correct. We hold that they do not enjoy the benefit of Section 8(2A) of the Central Act and the dealers' only remedy is to claim reimbursement of the State tax after they have paid the Central tax as well.

32. In the result, the tax revision case is allowed and the majority opinion of the Tribunal is set aside. The writ petition also is dismissed. However, having regard to the difficult question of law involved, we think that in the interests of justice no order as to costs should be made in these cases. Advocate's fee Rs. 100 in

each case.