

(1987) 11 AP CK 0039

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 6704 and 6706 of 1983

Venkata Krishna Constructions and Another

APPELLANT

Vs

Commercial Tax Officer, No. I, Vijayawada and Another

RESPONDENT

Date of Decision : 13-11-1987

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 6

Citation : (1988) 68 STC 287

Hon'ble Judges : Upendralal Waghray, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : P. Srinivasa Reddy, for S. Dasaratharama Reddi, for the Appellant; A. Venkataramana, Government Pleader for Commercial Taxes, for the Respondent

Judgement

B.P. Jeevan Reddy, J.—Three identical contentions are raised in these two writ petitions, viz., (i) that section 6-A of the A.P. General Sales Tax Act is unconstitutional and void; (ii) that the petitioners cannot be treated as "dealers" for the purpose of section 6-A; and (iii) even if the petitioners are not right in their first two contentions, still they are not liable to pay any sales tax on the material purchased by them, inasmuch as the material purchased by them is not consumed by them in the manufacture of other goods for sale, or otherwise, within the meaning of clause (a) in section 6-A. Learned counsel stated that all the three points are concluded by the decisions of this Court - the first two against the petitioners, and the third one in their favour. He brought to our notice that the constitutionality of section 6-A has been upheld by a Bench of this Court in Hindustan Milkfood Manufacturers Ltd. Vs. State of Andhra Pradesh and Another, , followed in Nandanam Construction Company and Others Vs. Assistant Commissioner (Intelligence) No. IV, Hyderabad, . On the second question, the learned counsel submitted, the decision of the Bench in Nandanam Construction Company and Others Vs. Assistant Commissioner (Intelligence) No. IV, Hyderabad, is against the petitioners, and that according to the said decision, the petitioners must be held to be "dealers" for the purpose of section 6-A. On the third question, however, the learned counsel submitted that the very same

decision in *Nandanam Construction Company and Others Vs. Assistant Commissioner (Intelligence) No. IV, Hyderabad*, concludes the issue in favour of the petitioners. This aspect needs a little elaboration.

2. The petitioners are contractors executing works contracts for the Government of Andhra Pradesh. They construct buildings or other structures, for which purpose they purchase, inter alia, sand gravel, stone, etc., from persons other than registered dealers. According to section 6-A of the Act, every dealer who, in the course of his business, purchases any goods (the sale or purchase of which is liable to tax under the Act) from a person other than a registered dealer, is liable to pay tax on the turnover relating to his purchase at the same rate at which tax would have been leviable on such goods, had they been sold by a registered dealer. There is, however, a further condition imposed in such a case, viz., that such purchaser "(a) consumes such goods in the manufacture of other goods for sale, or otherwise", or "(b) disposes of such goods in any manner other than by way of sale in the State", or "(c) despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce". One of the three conditions mentioned in clauses (a), (b) and (c) must be satisfied before a purchaser can be made liable under the said provision. In this case, clauses (b) and (c) have no application. (The learned Government Pleader, however, contended that clause (b) is attracted, which argument we shall deal with later). It is only clause (a) which is said to be attracted.

3. Clause (a) - read without being oppressed by any decision - contemplates the purchaser consuming the goods purchased by him either in the manufacture of other goods for sale, or consuming them otherwise. In this sense, the petitioners would be liable to pay the tax, inasmuch as they consume such goods otherwise than in the manufacture of other goods for sale. Counsel for the petitioners, however, argues that clause (a) should not be read in the above manner. According to him, clause (a) contemplates a situation where the goods purchased by a dealer from an unregistered dealer are consumed by him in the manufacture of other goods, whether for sale or otherwise. In other words, according to the learned counsel, the words "or otherwise" relate to, and must be read only along with the words "for sale" immediately preceding, and cannot be read as an alternative to the words "in the manufacture of other goods for sale".

4. In *Ganesh Prasad Dixit Vs. Commissioner of Sales Tax, Madhya Pradesh*, an identical question had arisen for consideration before the Supreme Court. The provision which fell for consideration before the Supreme Court was section 7 of the Madhya Pradesh General Sales Tax Act, which contained identical words. In so far as it is material, it read thus :

"Every dealer who in the course of his business purchases any taxable goods, in circumstances in which no tax u/s 6 is payable on the sale price of such goods and either consumes such goods in the manufacture of other goods for sale or otherwise, or"

5. The argument addressed and the decision of the Supreme Court would be evident from the following extract :

"Mr. Chagla for the appellants urged that the expression "or otherwise" is intended to denote a conjunctive introducing a specific alternative to the words "for sale" immediately preceding. The clause in which it occurs means, says Mr. Chagla, that by section 7 the price paid for buying goods consumed in the manufacture of other goods, intended to be sold or otherwise disposed of, alone is taxable. We do not think that that is a reasonable interpretation of the expression "either consumes such goods in the manufacture of other goods for sale or otherwise". It is intended by the legislature that consumption of goods renders the price paid for their purchase taxable, if the goods are used in the manufacture of other goods for sale or if the goods are consumed otherwise."

6. This decision is a clear authority against the proposition urged by the learned counsel for the petitioners. But the difficulty has arisen because of certain observations made by the Supreme Court in a subsequent decision. In Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers, the main question that arose was : when pineapple fruit is processed into pineapple slices for the purpose of being sold in sealed cans, whether it can be said that there is consumption of the original pineapple fruit for the purpose of manufacture, and on that basis, whether the case falls within section 5A(1)(a) of the Kerala General Sales Tax - which again is identical to section 6-A of our Act. It was held that although a degree of processing is involved in preparing pineapple slices from the original fruit, the commodity continues to possess its original identity, notwithstanding the removal of inedible portions, slicing and canning, and the addition of sugar to preserve it. Having answered the said question in favour of the assessee, the Supreme Court proceeded to make the following further observations :

"The learned counsel for the Revenue contends that even if no manufacturing process is involved, the case still falls within section 5A(1)(a) of the Kerala General Sales Tax Act, because the statutory provision speaks not only of goods consumed in the manufacture of other goods for sale but also goods consumed otherwise. There is a fallacy in the submission. The clause, truly read, speaks of goods consumed in the manufacture of other goods for sale or goods consumed in the manufacture of other goods for purposes other than sale."

7. These observations clearly support the contention of the petitioners. Relying upon these observations, the learned counsel for the petitioners contends that since the material purchased by the petitioners from unregistered dealers is not consumed by them in the manufacture of any other goods for sale, nor in the manufacture of any other goods for purposes other than sale, section 6-A is not attracted. On the other hand, the learned Government Pleader for Commercial Taxes states that, while the earlier decision of the Supreme Court in Ganesh Prasad Dixit Vs. Commissioner of Sales Tax, Madhya Pradesh, is a direct decision on the question, the observations in the later decision in Deputy Commissioner of

Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers, are mere obiter. He also submitted that while expressing the said opinion, the Supreme Court does to refer to the earlier decision in Ganesh Prasad Dixit Vs. Commissioner of Sales Tax, Madhya Pradesh, . He submits that having answered the main question in favour of the assessee, there was no occasion for the Supreme Court to consider the said aspect. This reasoning is disputed by the learned counsel for the petitioners, who says that the said observations cannot be treated as obiter dicta, because a question was directly urged, considered, and pronounced upon, and the mere fact that an earlier decision was not referred to, does not detract from the binding nature of the later decision. This very problem had indeed presented itself earlier to a Bench of this Court in Nandanam Construction Company and Others Vs. Assistant Commissioner (Intelligence) No. IV, Hyderabad, . While noting the above conflict and also noting the fact that both the decisions are rendered by Benches of co-ordinate strength, the Bench chose to follow the decision in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers, on the ground that it is a "subsequent" decision, and held, in a case identical to the one before us, that section 6-A is not attracted inasmuch as the material purchased by such contractors is not consumed in the manufacture of any goods for sale, or for disposal otherwise than for sale.

8. It is urged by the learned Government Pleader that the course adopted by the Bench in Nandanam Construction Company and Others Vs. Assistant Commissioner (Intelligence) No. IV, Hyderabad, is not a correct one, and that it requires reconsideration. He reiterates that, whereas the decision in Ganesh Prasad Dixit Vs. Commissioner of Sales Tax, Madhya Pradesh, is a direct decision on the point, the observations in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers, are not only obiter dicta but are also made without referring to the earlier decision directly on the point. He says that the proper course for us in the circumstances is to refer the matter to a Full Bench to make an authoritative pronouncement upon his submission. Counsel for the petitioners, besides supporting the reasoning in Nandanam Construction Company and Others Vs. Assistant Commissioner (Intelligence) No. IV, Hyderabad, submits that a reference to Full Bench is not called for, inasmuch as the Legislature of Andhra Pradesh has amended the relevant provision in view of, and to get over the decision in Nandanam Construction Company and Others Vs. Assistant Commissioner (Intelligence) No. IV, Hyderabad, . He submits that clause (a) as amended by Act 18 of 1985 (brought into force with effect from 1st July, 1984) reads thus :

"(a) consumes such goods in the manufacture of other goods for sale or consumes them otherwise"

9. He submits that in view of the said amendment, that controversy concerned herein would not arise for the period subsequent to 1st July, 1985, and hence reference to a Full Bench is not called for. It is also brought to our notice by the

learned counsel that an application for leave to appeal preferred by the State against the decision in *Nandanam Construction Company and Others Vs. Assistant Commissioner (Intelligence) No. IV, Hyderabad*, is now pending in the Supreme Court. He says that even if the matter is referred to a Full Bench and the Full Bench takes a contrary view, it would still be the subject-matter of an appeal to the Supreme Court. The proper course in the circumstances, he suggests, is to await the decision of the Supreme Court. Another submission made by him is that there will not be many cases like the present one, and also that the tax involved in this matter is too small.

10. It is true that what the learned Government Pleader says, is not without force. But, after having given our earnest consideration to the matter and to the arguments urged by both the counsel, we are not inclined to refer the matter to a Full Bench. The proper course for the State may be to have the SLP filed by it against the decision of this Court in *Nandanam Construction Company and Others Vs. Assistant Commissioner (Intelligence) No. IV, Hyderabad*, posted for admission and try to obtain a suspension of the said judgment. In our opinion the proper forum for explaining or resolving the conflict between the aforesaid two decisions of the Supreme Court is the Supreme Court itself. We may mention that the judgment in *Nandanam Construction Company and Others Vs. Assistant Commissioner (Intelligence) No. IV, Hyderabad*, was rendered as far back as September, 1982. It is more than 5 years. If the State were really serious, they should have seen to it that their SLP is posted for admission, and also moved for suspension of the said judgment. They have not chosen to do that. Evidently, having amended the clause concerned as aforesaid, they were more or less satisfied. In any event, even now it is not too late for the State to act in the matter any try to obtain an order of suspension of the judgment in *Nandanam Construction Company and Others Vs. Assistant Commissioner (Intelligence) No. IV, Hyderabad*, from the Supreme Court, if they are really so minded. Faced with the very same dilemma as was faced by the earlier Bench, it may not be proper or advisable to take a different line and refer the matter to a Full Bench which, in any event, would again land up in the Supreme Court.

11. Before concluding, we ought to deal with the contention of the learned Government Pleader that even if clause (a) is not satisfied, clause (b) is satisfied and that is sufficient to attract the liability to tax u/s 6-A. He says that use of material in the construction of buildings or other structures amounts to their disposal in a manner other than by way of sale, within the meaning of clause (b). We find it not possible to agree. "Disposing of" means parting with the goods, in some or other manner. It means transfer of goods from one to another [see *State of Tamil Nadu v. E.C. Constructions and Industries* [1968] 61 STC 337 (Mad.), *State of Kerala Vs. Ocean Wealth and Others*, , *Goodyear India Limited Vs. The State of Haryana and Another*, and *K. Cheyyabba Vs. State of Karnataka*,]. Since the petitioners are using the material in the construction of a building or other structure, it cannot be said that there is disposal of such material, even though the building/structure is being constructed for another.

12. In the circumstances, we are inclined to follow the decision in Nandanam Construction Company and Others Vs. Assistant Commissioner (Intelligence) No. IV, Hyderabad, and, accordingly, allow the writ petitions upholding the third contention urged by the learned counsel, mentioned at the inception of this judgment.

13. The writ petitions are, accordingly, allowed to the extent indicated above. There shall be no order as to costs. Advocate's fee Rs. 250 in each.

14. Writ petitions partly allowed.