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In the Andhra Pradesh High Court

Case No : T.R.C. No''s. 229, 243 and 244 of 1985

Vinod Solvent Extracts (P) Ltd. — APPELLANT

Vs

The State of Andhra Pradesh — RESPONDENT

Date of Decision : 01-08-1988

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 5(1), 8, 9, 9(1)
Central Sales Tax Act, 1956 — Section 6, 8, 8(2A), 8(5), 8(6)

Citation : (1989) 1 APLJ 53 : (1989) 73 STC 175

Hon'ble Judges : M.N. Rao, J;A. Seetharam Reddy, J

Bench : Division Bench

Advocate : P. Venkatarama Reddy, for the Appellant; Government Pleader for Commercial Taxes, for the Respondent

Judgement

M.N. Rao, J.—These three revision petitions are interconnected, in that they raise a common question of law and so they are disposed of by this common judgment.

2. The only question that falls for our consideration in these revision petitions is whether the Central sales tax on tapioca powder sold by the petitioner-assessee during the years 1978-79, 1979-80 and 1980-81 was not leviable by virtue of section 8(2-A) of the Central Sales Tax Act, 1956 ? In other words whether the petitioner-assessee is not liable to pay the Central sales tax for the three assessment years in question.

3. Tapioca is liable to tax at the point of last purchase in this State at 4 per cent as per entry 20 of the Second Schedule to the Andhra Pradesh General Sales Tax Act. Section 9 of the Andhra Pradesh General Sales Tax Act confers power on the State Government to notify exemptions and deductions of tax. In exercise of the power conferred u/s 9(1) the State Government issued G.O.Ms. No. 930, Revenue, dated 28th July, 1977 exempting "from the tax payable under the said Act (Andhra Pradesh General Sales Tax Act) with effect on and from the 1st August, 1977 the purchases of tapioca". The turnovers of the inter-State sales of tapioca powder effected by the petitioner-assessee during the three years in

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question were subjected to tax by the assessing authorities rejecting his contention that since tapioca was exempted from the Andhra Pradesh General Sales Tax Act by virtue of the aforesaid G.O., no Central sales tax leviable by operation of section 8(2-A) of the Central Sales Tax Act 1956. When the matter was carried in appeal to the Sales Tax Appellate Tribunal, the Tribunal agreed with the contention of the assessee so far as his claim that tapioca and tapioca powder are one and the same was concerned, but rejected his contention that section 8(2-A) of the Central Sales Tax Act was applicable for claiming exemption. The Tribunal was of the view that G.O.Ms. No. 930 exempted tax only in respect of purchase of tapioca and since it was not a general order of exemption from the payment of tax under the State law, the liability under the Central Sales Tax Act was attracted. The second ground on which the Tribunal negatived the assessee''s claim was that if the intention of the Government was to grant exemption even in respect of inter-State sales of tapioca, an order similar to G.O.Ms. No. 930 could have been issued under sub-section (5) of section 8 of the Central Sales Tax Act. Aggrieved by that the present revision petitions are filed.

4. After hearing the arguments of Sri Venkatarama Reddy, learned counsel for the petitioner, and the learned Government Pleader, we are of the view that these three revision petitions must be allowed. The commodity tapioca was exigible to tax under the State law at the purchase point. It was not liable to multi-point tax u/s 5(1) of the Andhra Pradesh General Sales Tax Act. When the taxable event was only at the purchase point under entry 20 of the Second Schedule in respect of tapioca, there is no basis for the view expressed by the Tribunal that the exemption order contained in G.O.Ms. No. 930 was a conditional one confined to exemption at the purchase point only. Obviously the Tribunal was under a mistaken impression that the commodity was liable to multi-point tax. By virtue of section 6, the Central sales tax is leviable on all sales effected by a dealer in the course of inter-State trade or commerce. Section 8 of the Central Sales Tax Act speaks of "rates of tax". Section 8(2-A), in so far as it is material for the purpose of these cases, reads : "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 four 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." It is, therefore, very clear from section 8(2-A) of the Central Sales Tax Act that if the turnover or any part of the turnover relating to sale or purchase of any goods was exempted under the sales tax law of the State, the same cannot be subjected to tax under the Central Sales Tax Act. The exemption granted by the sales tax law of the State as envisaged in section 8(2-A) covers the turnover, purchase as well as sale. Sub-section (6) of section 8 of the Central Sales Tax Act confers power on the State Government in the public interest to grant exemption to any dealer or any class of dealers in

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respect of sales effected in the course of inter-State trade or commerce. The statutory exemption contemplated u/s 8(2-A) comes into force in respect of any inter-State transactions if the same goods was exempted from tax under the State law. Such kind of exemptions falling within the ambit of section 8(2-A) are outside the purview of section 8(5). If no exemption is granted u/s 8(5) by the Government, the inter-State transactions of the concerned dealer or class of dealers must suffer Central sales tax in the absence of the application of section 8(2-A).

5. The reliance on Hindustan Milkfood Manufacturers Ltd. Vs. State of Andhra Pradesh and Another, by the Sales Tax Appellate Tribunal for holding that G.O.Ms. No. 930 contemplated conditional exemption, in our view, is erroneous. The distinction between the two kinds of exemptions contemplated in sections 8 and 9 of the State Act, inter alia, came to be considered by a Division Bench of this Court to which one of us (Seetharam Reddy, J.) is a party in the aforesaid decision. Dealing with this aspect, the Division Bench observed :

"Section 9 unlike section 8, is not a case of total exemption. u/s 8 there is a totality of exemption from tax on the goods specified in the Fourth Schedule, whereas section 9 enumerates, qualifies and restricts its exemptive effect in respect of sale or purchase of a specified class of goods as either at all points or at any specified point or by any specified class of persons whether it is with reference to the whole or any part of the turnover, or may extend to the whole or any part of the State."

6. The aforesaid statement of law makes it clear that the exemption given u/s 9 may be at all points or at any specified point or to any specified class of persons. In other words u/s 9 there could be a general exemption. As already adverted to supra, the exemption in respect of tapioca covered by G.O.Ms. No. 930 was a general exemption falling squarely within the ambit of section 9(1)(i). In respect of the specified class of goods - tapioca - exemption was granted from the purchase point and as the goods were not taxable at any other point, the exemption was "at all points".

7. For these reasons, we are of the view that the Tribunal has committed an error in holding that the petitioner-assessee, in respect of three years in question, was not entitled to exemption under the Central Sales Tax Act in respect of the turnovers of tapioca powder.

8. The question is accordingly answered in favour of the petitioner-assesses and against the Revenue. The disputed turnovers shall be excluded from the levy under the Central Sales Tax Act. No costs.

9. Petitions allowed.

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