ANDHRA PRADESH HIGH COURT

The State of Andhra Pradesh

Vs

Sri Krishna Cocoanut Co

(Umamaheswaram, and S.Q Hassan, JJ.)

12.11.1959

JUDGMENT

Umamaheswaram, J.

1. Three questions arise for consideration in both appeals Nos. 170 and 171 of 1956. The suits were instituted for refund of the sales tax paid by the plaintiff in each of the suits. The State of Andhra, represented by the Collector of East Godavari at Kakinada, contended that the sales tax was not refundable inasmuch as Article 286(1) (a) of the Constitution did not apply to the case. It was further contended that the suits were barred by limitation as they were not filed within three years from the date of each monthly assessment and lastly, that the Court had no jurisdiction to entertain the suits under Section 18-A of the Madras General Sales Tax Act, hereinafter referred to as "the Act". The Court below overruled all the contentions and decreed the suits. The State of Andhra has consequently preferred the two appeals.

2. Sri D.V. Reddy Pantulu, the learned Advocate for the appellant, strenuously contended that the cocoanuts exported outside the Andhra State were not proved to be for consumption as required under the Explanation to Article 286(1) (a) of the Constitution. There is no force in this contention. In 0.S. No. 71 of 1954, the clerk was examined as P.W. 1 and in O.S. No. 6 of 1955, the partner was examined as P.W. 1. They deposed that the cocoanuts were exported outside the Andhra State for the purpose of consumption. It was not elicited in their cross-examination that the cocoanuts were not for consumption. In the plaints, it was expressly stated that the cocoanuts were sent outside the State only for the purpose of consumption. This allegation was not denied in the written statements. No attempt was made on the part of the State of Andhra to prove that any of the goods exported by the parties were not intended for consumption or were sent for exporting outside those States. Moreover, we are inclined to think that the object of sending the cocoanuts to those States must have been only for the purpose of consumption. The positive evidence in the case establishes beyond doubt that the terms of the Explanation to Article 286(i)(a) are complied with.

3. The second contention of Sri D.V. Reddy Pantulu was that as the plaintiff in each of the suits was filing monthly returns, the limitation starts from the respective dates of monthly returns. Section 3(i)(a) of the Act expressly provides that subject to the provisions of the Act, every dealer shall pay for each year a tax on his total turnover for such year. The monthly returns provided under the rules were only for purposes of convenience. The monthly returns are only provisionally accepted by the Sales Tax Authorities. It is only after the final assessment is made under Rule 13(5) of the Madras General Sales Tax (Turnover and Assessment) Rules that the right to claim a refund arises. It is clear on the facts of the case that the final order of assessment was made on 26th November, 1951. The suits were filed within three years from 26th November, 1951, the date of the final assessment. We therefore agree with the court below that the suits were filed in time and that they were not barred by limitation.

4. The last question that remains for decision is whether the suits were barred under Section 18-A of the Act. We are clearly of the opinion that Section 18-A does not apply inasmuch as the suits are not to set aside or modify the assessment as contemplated by the section. What the plaintiff in each of the suits contends is that the Deputy Commercial Tax Officer had no jurisdiction to collect the assessment having regard to the clear terms of Article 286(1) (a) of the Constitution. That such suits are cognizable by civil courts is clearly laid down by the Privy Council in Secretary of State for India v. Mask & Co. (1940) 2 M.L.J. 140 We, therefore, overrule the contention that the suits were not maintainable.

5. In the result, the appeals fail and are dismissed with costs.