

ANDHRA PRADESH HIGH COURT

Sri Surya Trading Firm

Vs

The State of Andhra Pradesh

(P Chandra Reddy, C.J. G Nair, J.)

15.03.1963

JUDGMENT

P. Chandra Reddy, C.J.

1. The problem that is posed by this revision is whether an assessee falling under Section 8(2) of the Central Sales Tax Act, 1956, is entitled to the benefit of the exemption granted under Notification No. 2328 dated 13th December, 1957, issued by the State Government in exercise of the powers conferred under Section 9(1) of the Andhra Pradesh General Sales Tax Act, 1957.

2. The question arises in the following circumstances. The assessee, a dealer in handloom cloth, submitted his return for the assessment year 1957-58 disclosing a turnover of Rs. 1,27,516-7-9 and claiming exemption from payment of tax in regard to the turnover for the period between 14th December, 1957 (when the abovementioned notification came into effect) and 31st March, 1958. The turnover involved in this period is a sum of Rs. 58,312-1-9. This turnover consists of inter State sales and consequently, the transactions are governed by the provisions of Section 8 of the Central Sales Tax Act, 1956.

3. As the question to be answered by us depends on the construction to be put on Section 8, it is useful to read it here. It reads :

(1) Every dealer who, in the course of inter-State trade or commerce sells to a registered dealer goods of the description referred to in Sub-section (3) shall be liable to pay tax under this Act, which shall be one per cent, of his turnover.

We are unconcerned with the proviso and, therefore, we will omit it here.

(2) The tax payable by any dealer in any case not falling within Sub-section (1) in respect of the sale by him of any goods in the course of inter-State trade or commerce shall be calculated at the same rates and in the same manner as would have been done if the sale had, in fact, taken place inside the appropriate State, and for the purpose of making any such calculation any such dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State,

notwithstanding that he, in fact, may not be so liable under that law.

4. The other provisions of Section 8 are unnecessary for the present enquiry and so we do not propose to extract them here. We are here concerned only with Sub-section (2) as, admittedly, the petitioner in this case sold goods to unregistered dealers and as such he could not claim the advantage of Sub-section (1). Hence, he is governed by Sub-section (2).

5. The argument raised by Sri Krishna murthy, learned counsel for the petitioner, on the language of this sub-section is that from 14th December, 1957, handloom goods in which the assessee was dealing are exempt from payment of tax under the notification issued by the Government on 13th December, 1957, and that this exemption should be extended to him.

6. Before we consider the content of the fiction created by Sub-section (2), we have to turn our attention to the notification in question, which is the source of the claim for exemption. It reads: In exercise of the powers conferred by Sub-section (1) of Section 9 of the Andhra Pradesh General Sales Tax Act, 1957 (Andhra Pradesh Act VI of 1957) (hereinafter referred to as the said Act), the Governor of Andhra Pradesh hereby exempts from the tax payable under the said Act, with effect on and from the 14th December, 1957, the sale or purchase of any of the goods appended hereto * * *

Appendix

(1) All varieties of textiles, viz., cotton, woollen or silken including rayon art silk or nylon, whether manufactured by handloom, power loom or otherwise; * * *

7. Be it noted that the exemption is only in respect of goods exigible to tax under the Andhra Pradesh General Sales Tax Act.

8. For the sake of completion, we will refer to the terms of Section 9, which enabled the State Government to issue this notification. Section 9 says :

(1) The State Government may, by notification in the Andhra Pradesh Gazette, make an exemption, or reduction in rate, in respect of any tax payable under this Act-

(i) on the sale or purchase of any specified class of goods, at all points or at any specified point or points in the series of sales or purchases by successive dealers ; or

(ii) by any specified class of persons, in regard to the whole or any part of their turnover. *

* * *

9. Since Sub-section (2) has no bearing on this inquiry we need not quote it here.

10. Undoubtedly, the notification issued by the Government relates to the sale of a specified class of goods falling under Clause (1). The question for consideration is whether the assessee could derive any benefit from this notification. The contention of Sri K. B. Krishna murthy in this behalf is that the dealer coming within the purview of Section 8, Sub-section (2), of the Central Sales Tax Act, 1956, should be regarded as a dealer governed by the provisions of the Andhra Pradesh General Sales Tax Act, 1957, for all purposes. This argument is founded on the clause "shall be calculated at the same rates and in the same manner as would have been done if the sale had, in fact, taken place in the appropriate State."

11. We find it difficult to accede to this proposition. It is plain from the terms of the section that the fiction enacted by it is only for a limited purpose and that is for calculating the rate. The position of a dealer under Section 8(2) of the Central Sales Tax Act, 1956, could not be equated to a dealer governed by the Andhra Pradesh General Sales Tax Act for every purpose. This idea underlies the whole of the section. The deeming provision itself makes the position clear. The last portion of Sub-section (2) throws abundant light on this aspect of the matter. It says that the assessee attracted by this section has to pay tax under the sales tax law of the appropriate State, although he is not so liable under that law. . The non-obstante clause makes it plain that the fact that there is no liability to pay tax under the State law does not enable the assessee to escape liability to pay tax under the Central Act.

12. If the argument of Sri K. B. Krishna murthy is to be accepted, a person who sells goods to an unregistered dealer will be in a more advantageous position than the one selling goods to a registered dealer. That does not seem to be the intention of the section. On the other hand, we feel that the intention of the Legislature was that a sale to an unregistered dealer should be taxed at a higher rate than that applicable to the case of a registered dealer. So, if we give effect to the contention urged by Sri K. B. Krishna murthy, the object of the Legislature will be defeated.

13. Be that as it may, we feel that the assessee will be deemed to be a dealer under the State Act only for the limited purpose of calculating the rate and not for all purposes. Further, the notification can grant exemption only in respect of goods exigible to tax under the Andhra Pradesh General Sales Tax Act. But in this case, as the transaction spartake of an inter-State character, they are subject to tax only under the Central Act. If that were so, the State has no power acting under Section 9(1) to give exemption to goods liable to be taxed under the Central Act. We are not concerned with the power conferred upon the State Government under Section 8(5) of the Central Sales Tax Act, 1956, to give exemption even in respect of goods subjected to tax under the Central Sales Tax Act, 1956 also. In these circumstances, we find it difficult to disagree with the majority view of the Sales Tax Appellate Tribunal.

14. In the result, this tax revision case is dismissed. There will be no order as to costs.
(T.R.C. Nos. 13 and 14 of 1962).

15. The principle laid down in T.R.C. No. 12 of 1962 applies to the setax revision cases also.
These cases are also dismissed. There will be no order as to costs.

