

ANDHRA PRADESH HIGH COURT

K Vadivelu Chetty

Vs

Commercial Tax Officer Tirupathi

(Gopal Rao Ekbote,J.)

12.11.1970

JUDGEMENT

Gopal Rao Ekbote,J.

(1.) THE writ petition and the tax revision case raise a common question of law. They can, therefore, be disposed of by a common judgment. In order to appreciate the point raised, we would refer to the facts as they appear in the writ petition.

(2.) THE petitioner-firm carries on business as commission agents in jaggery and groundnuts at Chittoor. The firm is a registered dealer under the A. P. General Sales Tax Act. For the assessment year 1967-68 the petitioner purchased groundnuts within the State. He then sold the same in the course of inter-State trade. The petitioner filed a return. He claimed before the assessing authority at the time of assessment that on the sales within the State he is not liable to tax under section 15 (b) of the Central Sales Tax Act read with the proviso to section 6 of the Andhra Pradesh General Sales Tax Act on that part of the turnover which comprised the subsequent transactions of sales in the course of inter-State transactions. The assessing authority rejected that contention and assessed the petitioner to tax even in regard to these transactions. It is this order of assessment that is now challenged in this writ petition. The principal contention which was raised before the assessing authority has been now raised before us. The contention was that under section 15 (b) of the Central Sales Tax Act read with the proviso to section 6 of the A. P. General Sales Tax Act no tax can be levied on transactions of sale within the State if it is found that the goods were subsequently sold in the course of inter-State sales. In order to appreciate the implication of this contention it is necessary to read section 15 of the Central Sales Tax Act which is as follows : " 15. Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State.- 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. "

(3.) A careful and close analysis of this section would reveal that certain restrictions and conditions in regard to tax on sale or purchase are placed in so far as they relate to declared goods, when the transaction takes place within the State. Thus, the first two restrictions are that the tax payable on such transactions on declared goods inside the State shall not exceed 3 per cent. of the sale or purchase price thereof and secondly, such State tax shall not be levied at more than one stage. In this case, we are not concerned with the abovesaid two restrictions under clause (a) of that section. In so far as clause (b) of section 15 is concerned, it seems to us to be very clear when it says that where tax has been levied in regard to a transaction inside the State relating to any declared goods and where such goods, that is to say, goods on which tax has been levied by the State, are sold in the course of inter-State trade or commerce, the tax so levied by the State 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. The State Legislature under section 6 of the State Act made a provision for refund. Proviso to section 6 of the A. P. General Sales Tax Act reads as follows : " Provided that where any such goods on which a tax has been so levied 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 prescribed. " ;