Engineers and Traders Vs. State of Andhra Pradesh

Engineers and Traders Vs. State of Andhra Pradesh

SooperKanoon Citation : sooperkanoon.com/431099

Court : Andhra Pradesh

Decided On : Sep-23-1969

Reported in : [1970]25STC278(AP)

Judge : Gopal Rao Ekbote and ;Ramachandra Raju, JJ.

Appeal No. : Tax Revision Case Nos. 33 and 34 of 1965

Appellant : Engineers and Traders

Respondent : State of Andhra Pradesh

Advocate for Def. : P. Venkalarama Reddy, Adv. for ;Principal Government Pleader

Advocate for Pet/Ap. : K.B. Krishna Murthy, Adv.

Disposition : Petition dismissed

Judgement :

Ramachandra Raju, J.

1. In these two tax revision cases, a common question of law is involved. The assessee-firm is common and the question relates to some amounts of turnover. T.R.C. No. 33 is with regard to the turnover relating to the assessment year 1960-61 and T.R.C. No. 34 is with regard to the turnover relating to the assessment year

1961-62. The turnover in dispute relates to the supply of metal from quarries belonging to the assessee-firm to various customers engaged in the construction of bridges, formation and repairs of roads etc. The turnover for the assessment year 1960-61 consists of Rs. 2,09,034.99 nP. and for the assessment year 1961-62 it consists of Rs. 1,88,811.44 nP. The assessee-firm claimed exemption from tax on this turnover contending that they are the owners of the land from which the metal was quarried and they were paying land tax on that land and that what was extracted from the land belongs to themselves and they cannot be said to be dealers in respect of the sale of metal and that the quarrying contracts were exempted from sales tax under G.O. Ms. No. 1091, Revenue, dated 10th June, 1957. This contention of the assessee-firm was not accepted both by the sales tax authorities and the Sales Tax Appellate Tribunal. The Sales Tax Appellate Tribunal not only negatived the contention of the assessee-firm claiming exemption from the payment of sales tax as per G.O. Ms. No. 1091, Revenue dated 10th June, 1957, but also held that the fact the assessee pays land tax does not entitle him to exemption of the turnover of its business. The learned counsel appearing for the assessee did not address any arguments before us on the latter finding of the Tribunal, namely, that it is not entitled for exemption of its business turnover merely on the ground that it paid the land tax on the land from which the metal involved in the sales was quarried.

2. It is not disputed before us that if the exemption given under the G.O. does not apply to the transactions in question the assessee-firm would be liable to pay sales tax on the turnover in question. Therefore, the only point for our consideration is whether the assessee-firm can claim exemption under the G.O. mentioned above.

3. Under that G.O., the Government of Andhra Pradesh exempted from the sales tax payable under the Andhra Pradesh General Sales Tax Act, 1957, the sales of some items of goods which were detailed therein. Item No. 11 of the exempted goods as mentioned in that G.O. is as follows : 'earth work and gravel quarrying contracts.' It is under this item the assessee-firm claims exemption with regard to the turnover consisting of sales of metal quarried from, the land belonging to it. The transactions in question are pure and simple, only sales of metal quarried by

the assessee-firm from its own land. The question for consideration is whether those sales can be said to be the sales of goods of the category of earth work and gravel quarrying contracts. In the ordinary parlance earth work and gravel quarrying contracts cannot be goods but in the A. P. General Sales Tax Act, 1957, the term 'goods' was defined under Section 2(h) as follows:

Goods' means all kinds of movable property other than actionable claims, stocks, shares and securities, and includes all materials, articles and commodities including those used or to be used in the construction, fitting out, improvement or repair of movable or immovable property; and also includes all growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale, and also includes motor spirit

4. From the above it appears that apart from the articles of the ordinary nature that are generally treated as 'goods', 'things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale', are also 'goods' as per the definition. It appears it is only those goods which can be brought under this part of the definition of 'goods' given in the Sales Tax Act that are contemplated under item No. 11 of the G.O., which was mentioned as 'earth work and gravel quarrying contracts.'

5. In the present case, as had already been mentioned above, they were only sales of metal quarried. It does not appear that any contracts were involved in the transactions agreeing to sever the metal from the land, i.e., to quarry the metal before the sales took place or agreed to be severed under the contract of sale.

6. In this connection some. decisions cited before us may be noticed. Gopala Mines and Mineral Works v. The State of Andhra [1957] 8 S.T.C. 4, is a Bench decision of this High Court. In that case the assessee-firm took on lease some land, employed labourers and worked out the quarry and sold the resultant metal. The sales tax authorities assessed the firm to sales tax on the turnover representing the sales of the aforesaid material. The assessee claimed exemption in respect of that turnover by reason of the notification issued by the Government under Section 6(1) of the Madras General Sales Tax Act, 1939. Under that notification, exemption was given with regard to sales of the class of goods

specified as follows :

Earth work, laterite, metal, sand, jelly and gravel quarrying contracts.

7. It was held in that case that what was exempted by the notification is quarrying contracts of the materials mentioned therein but not the out and out sales of those materials. Subba Rao, C.J., as he then was, who spoke for the court in that case has said thus :

It may be that the Government thought it fit to exempt contracts whereunder the lessee or other contracting party agrees to quarry materials mentioned in the notification leaving untouched the right of the State to tax the subsequent sale of the material quarried. As the terms of the notification are clear and unambiguous, it is not necessary to discover the principle behind the notification. We, therefore, agree with the Tribunal that the sales effected by the assessee of metal, gravel, rubbish etc. are not exempt from sales tax.

8. In the decision, S. Bakthavatsalu v. The State of Madras [1963] 14 S.T.C. 832, the facts are these : Under a contract entered into with the Ney veli Lignite Corporation the assessee agreed to supply to it at particular places blue granite jelly of certain quality from certain specified quarries. The rates of payment were fixed at so much per 100 eft. of the material and this varied according to the place of delivery. The assessee contended that the amount paid to him under the contract was not liable to sales tax under the Madras General Sales Tax Act, 1939, on two grounds : (I.) that the contract was a contract of work and labour; and (2) that a Government notification exempted earth work, laterite, metal, sand, jelly and gravel quarrying contracts from tax payable under Section 3(1) of that Act. This is the same exemption which was considered by this court in the above-referred case. The Madras High Court held (1) that the contract was not a contract for labour wholly or purely but was a contract for supply of materials at a particular spot; (2) that the notification would not apply to a case where a person engaged himself to supply a certain material which had necessarily to be quarried and the present contract was a contract for supply and not a contract for quarrying. In that case the learned Judges have also observed as follows:

The notification only purports to exempt quarrying contracts wherein a transfer of property is involved. If A takes a lease of quarrying rights from the owner of the quarry B and quarries metal as a result of that contract and takes it away, it might, in a manner of speaking, be said that the lease itself involves the transfer of property in the quantity so quarried. It is quite possible that the notification may apply to such a case. It does not. seem to us that this notification would apply where a person engages himself to supply a certain material, which has necessarily to be quarried. That is a contract for supply and not a contract for quarrying.

9. By a combined reading of the definition of 'goods' as defined under Section 2(h) of the A. P. General Sales Tax Act, 1957, and item No. 11 of the exempted goods mentioned in G.O. Ms. No. 1091, Revenue dated 10th June, 1957, under which the assessee-firm claims exemption, it appears to us that to claim exemption under that item it must necessarily be a contract either of earth work or of quarrying gravel and that contract must necessarily involve besides supply of gravel or earth, an agreement to sever the earth or gravel from the land before sale or agreement to sever gravel or earth under the contract of sale. It is not the case of the assessee-firm that there was any such contract involved in the sales of the metal made by it.

10. But it was argued by Sri K. B. Krishna Murthy, the learned counsel appearing for the assessee-firm, that the exemption in question granted under the G.O. must be taken as giving exemption to the sales of gravel quarried and sold and even though the assessee-firm quarried the metal from its own land it must be deemed that the quarrying was done as on contract and in this view of the matter it must be held that the transactions in question were exempted from payment of sales tax. We fail to see that there is any basis or warrant for construing the sales in question in such a manner.

11. Under these circumstances we do not see any merits in these two revision cases. Accordingly, the two revision cases are dismissed with costs.