

**State of Andhra Pradesh Vs. East Coast Boat Builders and Engineers Ltd.**

**State of Andhra Pradesh Vs. East Coast Boat Builders and Engineers Ltd.**

**SooperKanoon Citation :** [sooperkanoon.com/434346](http://sooperkanoon.com/434346)

**Court :** Andhra Pradesh

**Decided On :** Mar-13-1997

**Reported in :** [1997]107STC135(AP)

**Judge :** B. Sudershan Reddy and ;Lingaraja Rath, JJ.

**Acts :** Arbitration Act - Sections 8 and 20; Andhra Pradesh General Sales Tax Act, 1957 - Sections 14-A

**Appeal No. :** Tax Revision Case No. 5 of 1997

**Appellant :** State of Andhra Pradesh

**Respondent :** East Coast Boat Builders and Engineers Ltd.

**Advocate for Def. :** R. Srinivasa Reddy, Adv.

**Advocate for Pet/Ap. :** Government Pleader for Taxes

**Judgement :**

**Lingaraja Rath, J.**

1. Assailing the order passed by the Sales Tax Appellate Tribunal allowing the two appeals filed by the respondent against the order of the Appellate Deputy Commissioner and holding that the extra consideration raised by the respondent in the invoice is not permissible to be included in the determination of the turnover of

the respondent, this revision has been preferred.

2. The respondent has the business of manufacture of fishing trawlers and during the year under consideration had sold trawlers to three parties. Because of the escalation in the price of certain imported components, the respondent claimed higher price than the agreed amount and raised invoices for that. The assessing authority took the view that having raised invoices, the higher amounts claimed therein are includible in the turnover and the respondent is liable to pay tax on this amount. The respondent disputed the determination, in the first appellate forum, examining various documents executed between the parties and also between the Government and pointing out that the transaction of sale of trawlers was a tripartite agreement between the respondent who is the builder, the buyer and the Shipping Development Fund Committee. In the agreement, the price of the trawler is fixed and that the respondent as the builder receives as subsidy and the buyer also receives a loan from the Shipping Development Fund Committee. The whole contract of sale was negotiated by the Ministry of Agriculture, Government of India. Under the agreement, no higher price was receivable by the respondent even though the respondent had suffered loss due to escalation and it was not within its competence to ask for a higher escalation of price only because there has been increase in the prices of the foreign components. The matter has to be decided again by a tripartite settlement among the three parties as well as the Ministry of Agriculture. The respondent had also taken steps for the reference of the question to a sole arbitrator which request has been rejected by the buyer and a petition filed under sections 8 and 20 of the Arbitration Act before the Delhi High Court praying for appointment of a sole arbitrator for settlement of the dispute and the differences is pending. The Ministry of Agriculture finally by its letter of January 12, 1988 had agreed for an overall escalation to the ceiling of 5 per cent to cover three factors, that is, on steel price, certain major machinery and equipment, foreign exchange fluctuations and any variations in statutory taxes and duties. It was hence the contention of the respondent that as the charge of higher prices was not available to be made unless an agreement in that respect is reached subject to the overall agreement of the Government of India, mere raising of invoice would not ipso facto make the price receivable by the respondent. It was urged by the respondent that the invoices, which he said were bills, were nothing but an attempt

to move the machinery for seeking recoupment of the excess costs incurred by him and did not per se constitute valid sale bills.

3. Considering the respective contentions, the Tribunal addressed itself to the question as to whether the sale had taken place to the extent of the price escalation for which the respondent had raised the bills. It held the question to be answered in the negative as the disputed turnover did not constitute part of the original agreed price for the sale of trawlers. It was abundantly clear by the tripartite agreement between the respondent, the buyer and the Shipping Development Fund Committee that the price agreed upon for each trawler was firm and not amenable to negotiation and therefore the respondent had to move not only the Shipping Development Fund Committee but also the Ministry of Agriculture which was involved in the negotiations for the purchase of trawlers by the respondent. There was no built-in clause in the tripartite agreement binding all the parties concerned to any kind of quantification in case of price variation due to foreign exchange fluctuations. The buyer had even objected to the referring of the matter to arbitration. The Tribunal reached the conclusion that because of these facts it could not be said that the disputed turnover represents the price which had accrued to the respondent, and that therefore section 2(5) has no application. On the other hand, the disputed turnover squarely represents the price variation which is accountable on receipt basis as laid down in the provisions of section 14-A of the Andhra Pradesh General Sales Tax Act, 1957.

4. Section 2(5) defined 'turnover' as the provision stood at the relevant time, as the total amount set out in the bill of sale and also provided that if there is no bill of sale, the turnover would mean the total amount charged as the consideration for the sale or purchase of goods by a dealer either directly or through another, on his own account or on account of others, whether such consideration be cash, deferred payment or any other thing of value. Section 14-A is the provision regarding assessment in cases of price variations and stipulates that if any dealer receives any amount in a year due to price variations which would have been included in his turnover for any previous year if it had been received by him in that year, he shall within 30 days from the end of the year in which such amount is received, submit a return in such form as may be prescribed to the assessing

authority and thereupon the assessing authority shall proceed to assess the tax payable on such amount. If the return is not accordingly submitted, a default procedure is also stipulated. No doubt, so far as section 2(5) is concerned, any amount charged as per the bill of sale or even otherwise when there is no bill of sale, is includible in the turnover and authorities under the Act would be acting within their jurisdiction to include the amounts so charged in the turnover for the determination of the tax due. But there it is proved to the satisfaction of the authorities that though an amount has been charged but is not receivable because of some dispute beyond the control of the assessee, the specific provision in section 14-A is available to be resorted to under which the Revenue is protected that if any amount is ultimately received by the assessee, it is subjected to tax the next year in the manner prescribed and also that if the assessee fails to report such payment to him, he shall be subjected to best judgment. Section 14-A being a specific provision regarding price variation, it shall prevail to the extent justified by facts of any particular case by application of the principles of *generalia specialibus non derogant*. This is not to say that in all cases where the assessee pleads a dispute about the price variation the amount would not be includible in the turnover, but a discretion is vested in the authorities when a genuine case is pleaded and established, to resort to section 14-A. The discretion has to be judiciously exercised on equitable principles. It is only such view that has been taken by the Tribunal and we think, rightly. Considering the matter from such view, we do not find any infirmity in the judgment of the Tribunal. The revision hence has no merit and is dismissed.

5. Petition dismissed.