

Lakshmi Traders Vs. State of A.P.

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Court : Andhra Pradesh

Decided On : Jul-14-2003

Reported in : 2003(5)ALD340; [2005]139STC392(AP)

Judge : Motilal B. Naik and ;Dalava Subrahmanyam, JJ.

Acts : Andhra Pradesh General Sales Tax Act, 1955 - Sections 9

Appeal No. : TRC Nos. 132 and 287 of 2001 and WP No. 20216 of 2002

Appellant : Lakshmi Traders

Respondent : State of A.P.

Advocate for Def. : Special Government Pleader for Taxes

Advocate for Pet/Ap. : K. Raji Reddy and ;Y. Venkatesh Reddy, Advs.

Judgement :

ORDER

Motilal B. Niak, J.

1. T.R.C. Nos. 132 of 2001 and 287 of 2001 arise out of the common order, dated 10.3.2000 made by the Sales Tax Appellate Tribunal, Hyderabad in T.A.Nos. 219 and 220 of 1997.

2. The controversy in these two T.R.Cs. is with regard to the exemption to be granted under the A.P. General Sales Tax Act to the three items being sold by the petitioners i.e., Krafl Box Waste, Sweeping Kraft and Duplex in terms of G.O. Ms. No. 130, dated 14.2.1989. The petitioner-M/s. Lakshmi Traders, Vijayawada, is a dealer engaged in the business of sale of wastepaper, which claimed exemption from payment of sales tax under the A.P.G.S.T. Act on the total turnover in terms of G.O. Ms. No. 130, dated 14.2.1989. The Assessing Authority refused to grant exemption to the category of goods involved. The matter was then carried to the Appellate Deputy Commissioner, who also confirmed the order made by the Assessing Authority. Again the matter was carried before the Sales Tax Tribunal, which also dismissed the appeals affirming the view taken by the Assessing Authority as affirmed by the Appellate Deputy Commissioner.

3. Aggrieved by the same, the petitioner has chosen to challenge the order made by the Sales Tax Appellate Tribunal before this Court in these two T.R.Cs. primarily raising the following question of law for adjudication by this Court.

Question of Law:

'Whether the expression of 'wastepaper' as found in G.O. Ms. No. 130, dated 14.2.1989 includes and covers 'wastepapers of all kinds'?

4. The other writ petitions are filed by the different assessees seeking a writ of mandamus or any other order declaring that waste of various classes of paper enumerated under Clauses (i) to (iv) of Item 143 of I Schedule or under Item 19 of the VI Schedule is liable to be classified as 'wastepaper' within the purview of G.O. Ms. No. 130, Revenue (CT.II) Department, dated 14.2.1989 and is entitled to exemption in terms of the said G.O. and to grant such other relief.

5. In these two T.R.Cs. and the writ petitions the main controversy is whether the expression of 'wastepaper' as found in G.O. Ms.No. 130, Revenue (CT.II) Department, dated 14.2.1989 includes and covers 'wastepapers of all kinds' and as such the T.R.Cs. and the writ petitions are taken up for consideration and being decided by the following common order.

6. On behalf of the writ petitioners Sri S.R. Ashok, learned Senior Counsel primarily contended that all through up to 1.4.1995 as found in Item No. 143 of I Schedule 'wastepaper' included all papers including card board, and it is only with effect from 1.4.1995, this category is shown in item No. 19 of VI Schedule whereunder same meaning is given. Learned Senior Counsel stated that the Government of Andhra Pradesh issued G.O. Ms. No. 130, dated 14.2.1989 through which specific goods were ordered to be exempted from payment of sales tax, one of the items being 'waste paper' excluding 'old newspapers' or 'newspaper waste'. Learned Senior Counsel contended that the items involved in the sale as Kraft box waste, Sweeping Kraft box, and duplex waste would also fall within the definition of 'wastepaper'. It is also stated that in the said G.O., which ordered exemption for 'wastepaper', though has excluded 'old news papers' or 'newspaper waste' from the tax net, but however the same are not exempted. He drew our attention to the other Notification issued by the Government in G.O. Ms. No. 540, dated 5.9.2002, clarified that sales tax on Kraft Box Waste, Sweeping Kraft Box and Duplex Waste is exempted.

7. Learned Senior Counsel drawing our attention to G.O. Ms. No. 130, dated 14.2.1989 and the later G.O. i.e., G.O. Ms. No. 540, dated 5.9.2002 and stated that the Tribunal is not justified in giving a new meaning to the definition of 'wastepaper' and 'newspaper waste'. He also stated that the items involved i.e., Kraft Box Waste, Sweeping Kraft Box and Duplex Waste would come within the definition 'wastepaper' and therefore, the view taken by the Tribunal is incorrect and requires appropriate adjudication by this Court. Learned Senior Counsel also incidentally took us to Item No. 143 of I. Schedule of A.P.G.S.T. Act and further specifically drew our attention to Clause (iii) of Schedule I of the Act which includes printing and writing paper, packing and wrapping paper, straw board and pulp board, including grey board, corrugated board, duplex and triplex boards or other sorts and stated that through Item 143 of Schedule I of the Act, it has been clarified that these categories of paper would include in the definition of 'wastepaper' and therefore, the Tribunal ought not to have given a different meaning for 'wastepaper' and as such the matters requires adjudication by this Court.

8. Learned Special Government Pleader for Taxes appearing for the respondents submitted that though benefits were extended for some period, but later through G.O. Ms. No. 540, dated 5.9.2002 the position was clarified and that if the petitioners are entitled for any benefit, they could claim that benefit only after 5.9.2002. It is also stated that the Tribunal has taken an overall view of the matter and has decided that these items, which are being sold by the petitioners, would not fall within the ambit of 'wastepaper'. It is noticed though 'wastepaper' was totally exempted from the net of tax under the Act earlier, but later in the year 1989 through G.O. Ms. No. 130, dated 14.2.1989, the benefit of exemption from payment of sales tax was restricted to certain items excluding 'old newspapers' or 'newspaper waste'.

9. The question is whether the three items i.e., Kraft Box Waste, Sweeping Kraft Waste and Duplex Waste, which are being sold by the petitioners, would fall within the ambit of 'waste paper'. 'Waste paper' includes all these categories. In the absence of any definition provided to the category of 'wastepapers' it is to be understood that all papers, which become useless shall be treated as 'waste papers'. Since the items, which are being sold by the petitioners, are included within Item No. 143 of Schedule I of the Act, they are liable to be exempted from payment of sales tax. Further G.O. Ms. No. 540, dated 5.9.2002 issued by the Government also clarified that Kraft Box Waste, Sweeping Kraft Box and Duplex Waste are also liable to be exempted from payment of sales tax.

10. During the course of hearing of these T.R.Cs. and writ petitions, learned Senior Counsel for the petitioners has also incidentally placed a letter addressed by the Commissioner of Commercial Taxes, Government of Andhra Pradesh, to the Special Chief Secretary to Government, Revenue (CT.II) Department, dated 8.2.2002 to visualize the correct position in the light of the decisions rendered by the Sales Tax Appellate Tribunal. In the said letter the learned Commissioner also opined that on the face of the decision of the Sales Tax Appellate Tribunal in Lakshmi Traders, Vijayawada v. State of A.P., 32 APSTJ 31, it is not desirable to interfere with the past proceedings and therefore he strongly recommends to the Government to amend the said item (i) by expressly including Kraft Box Waste, Sweeping Kraft Box and Duplex Waste with effect from 1.4.2002 by making them

eligible for exemption. Learned Senior Counsel stated that on the basis of this letter, the Government issued later G.O. i.e., G.O. Ms. No. 540, dated 5.9.2002. He also stated that merely because the Commissioner clarified the position and later the Government issued G.O. Ms. No. 540, dated 5.9.2002 it cannot be said that these items are exempted from payment of tax only from the date of commencement of G.O. Ms. No. 540, dated 5.9.2002.

11. On an analysis of the entire material placed before us and in the light of the meaning given to the 'waste paper' and also the exemption provided under G.O. Ms. No. 130, dated 14.2.1989 and the later G.O. i.e., G.O. Ms. No. 540, dated 5.9.2002, we are of the view, the Tribunal would not have given a new meaning and tried to distinguish a particular item with other items on the sole analogy of Murmuralu (puffed rice) and Palalu (parched rice). In the cases on hand we are not dealing with Murmuralu (puffed rice) and Palalu (parched rice) to find out what was the raw material used for making Atukulu, Murmuralu (puffed rice) and Palalu (parched rice). The items which are sold by the petitioners are included in items 143 of 1st Schedule to the Act are exempted from payment of tax. In that view of the matter, the issue has to be answered against the Revenue declaring that the three items being sold by the petitioners shall be entitled for exemption from payment of sales tax in terms of G.O. Ms. No. 130, dated 14.2.1989 and G.O. Ms. No. 540, dated 5.9.2002.

12. For all the reasons, we allow the two TRCs and all the writ petitions holding that the items which are being sold by the petitioners in the TRCs and writ petitions shall be entitled for exemption from payment of sales tax in terms of G.O. Ms. No. 130, dated 14.2.1989 and G.O. Ms. No. 540, dated 5.9.2000. No order as to costs.

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