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M/S. ANDHRA AGENCIES

v.

STATE OF A.P.

(Civil Appeal No. 6694 of 2008)

NOVEMBER 18, 2008

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[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]

Andhra Pradesh General Sales Tax Act, 1957 – Credit notes issued by the manufacturers-first sellers to the subsequent sellers/dealer – Inclusion of, in the taxable turnover of the dealers – Held: Books of accounts not produced by assessee before authorities – Assessee directed to produce books of accounts before the authorities for adjudication of issue in proper perspective.

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The assessee was dealer/distributor of liquor. The manufacturers-first sellers issued credit notes to the assessee. The question before this Court is whether these credit notes were includible in the taxable turnover of assessee.

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The stand of assessee before the authorities and High Court was that the first seller collected tax on total turnover representing the sale prices from respective dealers and claimed reduction/rebate in their turnover representing credit notes and obtained reduction/rebate of tax from the department and hence such amount would not be part of taxable turnover in the hands of dealers who were subsequent sellers. The High Court held that when the manufacturer returned a part of the sale consideration under the credit notes, the returned amount under the credit notes includes a part of the tax that was already collected since the tax collected was an inseparable part of the sale consideration.

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In the instant appeal, it was contended for the assesseees that wholesaler had paid tax on the whole amount before adjustment of the credit notes and hence the revenue was not justified in levying further demand. A

Disposing of the appeal, the Court B

HELD: 1.1. The basic issue can be better appreciated by way of an illustration. Hypothetically taking the sale price to be Rs.100/-, the tax to be paid by the selling dealers has to be on 100. He may collect 90, after giving discount. If the sale price of the intermediate seller is 110 his liability to pay tax shall be on 10 i.e. 110-100. The department's stand that it should be 20 i.e. 110-90, would not be correct if the first seller had paid tax on 100. Therefore, it has to be verified as to what was the amount on which tax was paid on the illustrative figures given above by the selling dealer. The stand of the assesseees before the Tribunal and the High Court was that they were not given personal hearing and only on consideration of their objections, the orders were passed by the authorities. The Tribunal and the High Court held that since objections were considered, there was no need for giving personal hearing. Such conclusion is clearly unsustainable. It is conceded that the books of accounts were not produced before the authorities. Additionally, there was no document produced to show that the selling dealer had paid tax at 100 i.e. illustrative figure given above. Certain documents relating to the purchases by the assesseees i.e. sale bills and memos of the selling dealers were produced to show as to the amount on which the tax was paid by the selling dealers. These apparently were not considered because of the fact that the books of account were not produced by the assessee. [Paras 5 and 6] [268-E-H; 269-A-C] C D E F G

1.2. As the adjudication to the basic issue involved depends upon the amount on which tax has been paid H

- A by the selling dealer, it would be appropriate to permit the assessee to produce the books of accounts for adjudication before the concerned Deputy Commissioner. Assessee shall produce evidence to show that the tax has been paid by the selling dealer on the illustrative figure of 100 given in the illustrative figure. The said authority shall verify the correctness of the claim with reference to the documents to be produced. If it is established, tax shall be payable on 10 as per the illustration. Otherwise, the Revenues' stand shall stand established. [Para 8] [269-H; 270-A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6694 of 2008.

- D From the final Judgment and Order dated 16.8.2004 of the High Court of Andhra Pradesh at Hyderabad in TRC No. 36 of 1994.

Dr. M.V.K. Moorthy, A Chandramohan and T. Anamika for the Appellant.

- E Anoop G. Choudhary, Manoj Saxena, Rajneesh Kr. Singh, Rahul Shukla and T.V. George for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

- F 2. Challenge in this appeal is to the judgment of the Division Bench of the Andhra Pradesh High Court dismissing the Revision Petitions and special appeals filed by several assessee under Section 22(1) (so far as the revisions are concerned) and Section 23(1) (so far as the appeals are concerned) of the Andhra Pradesh General Sales Tax, 1957 (in short the 'Act'). The basic issues involved are the same. For different assessment years, orders were passed by exercising revisional power by the Commissioner of Sales Tax. In some cases Deputy Commissioner exercised revisional power. The issue involved was whether the value representing the credit

notes issued by the manufacturers to the distributors were to be included in the taxable turnover. All the assessees involved were carrying business in liquor as distributors of the brand manufactured by M/s. Shaw Wallace & Co. Ltd. And M/s. Vinadale Distilleries (P) Ltd., Hyderabad. For the relevant assessment years, sales tax was leviable on the first and last sale of the total sales affected. At the same time as per the proviso to Schedule VI the intermediate dealers are taxable on the differential turnover i.e. the intermediate dealers are entitled for exclusion of the turnover which had already suffered tax. The assessees in question are intermediate dealers which are liable to tax only on the differential turnover i.e. after excluding the turnover which had already suffered tax. It is the case of the assessees that they used to purchase various brands of liquor from the two manufacturers who are the first sellers and who are liable to be taxed on the total turnover in so far as their sales are concerned. After the sales were affected by the dealers in question they have declared the differential turnover i.e. the difference between the purchase price and the sales price which was subjected to tax by the assessing officer. However, it came to light that the assessees had received periodical credit notes representing the discount i.e. either annual discount or quarterly discount from the manufacturers. It was the stand of the Revenue that they were not taken into account while making assessment though they were entered in the books of accounts. These facts came to light subsequently when the task force of the department verified the books of account of the above two manufacturers. Therefore, revisional proceedings were initiated to include the amounts in question in the taxable turnover in respect of the amounts representing the value covered by the Credit notes. In some cases the Commissioner passed revisional orders because according to him while revising the assessment, Deputy Commissioner had not taken the correct figures. Assessee's stand before the Authorities as well as the High Court was that the first seller had collected tax on the total turnover representing the sale prices from the respective dealers and the first seller manufacturers claimed

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- A reduction/rebate in their turnover representing the credit notes and obtain reduction/rebate of the tax from the department. Therefore, such amounts should not have been treated as a part of the taxable turnover in the hands of the dealers who are the subsequent sellers. The stand of the Revenue was that when the manufacturer returned a part of the sale consideration under the credit notes, the returned amount under the credit notes includes a part of the tax that was already collected since the tax collected was an inseparable part of the sale consideration. The High Court was of the view that the basic question was whether value of the credit notes goes to reduce the purchase turnover of the dealers or not. The High Court found that the Revenue's stand was correct.

3. In support of the appeal learned counsel for the appellant submitted that the whole saler had paid tax on the whole amount before adjustment of the credit notes. Therefore the revenue was not justified in levying further demand.

4. Learned counsel for the Revenue on the other hand supported the judgments of the Authorities and the High Court.

5. The basic issue can be better appreciated by way of an illustration. Hypothetically taking the sale price to be Rs.100/-, the tax to be paid by the selling dealers has to be on 100. He may collect 90, after giving discount. If the sale price of the intermediate seller is 110 his liability to pay tax shall be on 10 i.e. 110-100. The department's stand is that it should be 20 i.e. 110-90. This stand will not be correct if the first seller had paid tax on 100. Therefore, it has to be verified as to what was the amount on which tax was paid on the illustrative figures given above by the selling dealer. The stand of the assesses before the Tribunal and the High Court was that they were not given personal hearing and only on consideration of their objections, the orders were passed by the authorities. The Tribunal and the High Court held that since objections were considered, there was no need for giving personal hearing. Such conclusion is clearly unsustainable.

6. It is conceded that the books of accounts were not produced before the authorities. Additionally, there was no document produced to show that the selling dealer had paid tax at 100 i.e. illustrative figure given above. It appears that certain documents relating to the purchases by the assesseees i.e. sale bills and memos of the selling dealers were produced to show as to the amount on which the tax was paid by the selling dealers. These apparently were not considered because of the fact that the books of account were not produced by the assessee. The stand of the assesseees is that because the documents were seized by certain taxing authorities, they could not be produced. It is stated by learned counsel for the assessee that if given the opportunity, they shall produce the documents.

7. The VIth Schedule as substituted by Act No. 22 of 1995 with effect from 1st April, 1995 relates to goods in respect of which the tax is leviable under Section 5. The relevant provision reads as follows :

"Provided that for the purpose of liquor at any point of sale other than the first point of sale and the last point of sale, the turnover of the goods liable to tax shall be arrived at by deducting the turnover of such goods on which tax has been levied at the immediately preceding point of sale.

Provided further in respect of goods other than liquor mentioned in this Schedule, tax to be paid at any point of sale other than First Point of Sale, shall be determined after deducting the tax levied on the turnover of such goods at the immediately preceding point of sale by a registered dealer from the tax leviable on the turnover of the same goods at the point of sale by selling dealer."

8. As the adjudication to the basic issue involved depends upon the amount on which tax has been paid by the selling dealer, it would be appropriate to permit the assessee to

- A produce the books of accounts for adjudication before the concerned Deputy Commissioner. In the instant case it is the Dy. Commissioner (CT) Sikandrabad. The assessee shall appear before the said authority on 4.11.2008 without further notice. It shall produce evidence to show that the tax has been
- B paid by the selling dealer on the illustrative figure of 100 given in the illustrative figure. The said authority shall verify the correctness of the claim with reference to the documents to be produced. If it is established, tax shall be payable on 10 of the illustration. Otherwise, the Revenues' stand shall stand
- C established.

9. The appeal is accordingly disposed of.

D.G.

Appeal disposed of.

- D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6693 of 2008.

From the final Judgment and Order dated 16.8.2004 of the High Court of Andhra Pradesh at Hyderabad in Special Appeal Nos. 34 & 35 of 1994 & TRC Nos. 37 to 41 of 1994.

- E M/s. Kumar Spirits Pvt. Ltd. etc. etc. Appellant
- versus

State of A.P. and Ors. Respondents

- F The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. The issues in the present appeal are similar with those which form the subject matter of challenge in the appeal (Civil Appeal No. 6694 of 2008) arising out of SLP (C) 21538 of 2006. The appeal has been disposed of by a separate order today. The present appeal is also disposed of on the same terms as were indicated in the appeal relating to SLP (C) 21538 of 2006.

D.G.

Appeal disposed of.