(1959) 02 AP CK 0001

Andhra Pradesh High Court

Case No: Appeal No. 440 of 1954

T.R.N. Subba Raju		APPELLANT
	Vs	
State of Andhra (Now Andhra Pradesh)		RESPONDENT

Date of Decision: Feb. 18, 1959

Acts Referred:

- Contract Act, 1872 - Section 72

Citation: (1959) 10 STC 449

Hon'ble Judges: Umamaheswaram, J; Ranganadham Chetty, J

Bench: Division Bench

Advocate: S. Ramamurthy, for the Appellant; D.V. Reddi Panthulu, for the Respondent

Judgement

The Judgment of the Court was delivered by

Umamaheswaram, J.

This is an appeal directed against the judgment and decree of the Subordinate Judge of Visakhapatnam, in O. S. No. 47 of 1953. The question that arises for consideration in the appeal is whether the appellant is entitled to a refund of the sales tax that he paid in respect of the turnover for the period 26th January, 1950, to 31st March, 1950. The Subordinate Judge held that the contracts were all concluded in the State of Andhra and that he was consequently not entitled to a refund of the sales tax paid by him. He also held that as the payment was made voluntarily, he would not be entitled to recover the amount.

2. Sri S. Ramamurthy, the learned Advocate for the appellant, con-etnded that the view taken by the Subordinate Judge on both the questions is erroneous and opposed to the evidence as also the decisions of the Supreme Court and this Court. The first question that arises, for decision is whether the sale took place within the State of Andhra or outside the State. The clerk of the plaintiff, who was examined as P. W. 1, stated the nature of the sale in the following terms:

Consignments were sent to Mysore State, Orissa, Bengal and Bihar. The sales are completed outside the Province. The R. Rs. are sent with a hundi. The R. R. is in our name. Delivery is outside the State. The property in the goods is with us till delivery. If not delivered, we sell the stock there in our own name. The above terms of the sale are all oral. The goods are weighed here by us, and by them there All loss of stock sent by rail is borne by us when sent to customers outside the Province.

3. We accept his evidence and hold that the property in the goods does not pass until the hundi is honoured by the customer outside the State. On similar facts, two Bench decisions reported in The State of Madras (now Andhra Pradesh) Vs. Vuppala Peda Venkataramaniah and Sons, Commission Kottu (Shops) Anakapalle and Others, and Sri Rama Purchase and Sale Society Ltd, v. The State 1958 A.L.T. 816, took the same view. We follow those decisions and hold that the sales did not take place within the State of Andhra and that they are not liable to be taxed under the Madras General Sales Tax Act of 1939.

4. The view taken by the learned Subordinate Judge that the tax paid by the appellant was voluntary and was not liable to be refunded u/s 72 of the Indian Contract Act is opposed to the recent decision of the Supreme Court reported in Sales Tax Officer v. Kanhaiya Lal AIR 1959 S.C. 135.

5. In view of the decision of the Supreme Court in Ram Narain Sons Ltd. v. Assistant Commissioner of Sales Tax and Ors. [1955] 2 S.C R. 488 and Sri Rama Purchase and Sale Society Ltd. v. The State 1958 A.L.T. 816, Sri D.V. Reddi Panthulu, the learned Advocate for the respondent, did not rely upon the Sales Tax Continuance Order of 1950 as validating the levy.

6. There is no substance in the contention of Sri D.V. Reddi Panthulu, the learned Advocate for the respondent, that inasmuch as the appellant had collected sales tax from his customers, he is not entitled to a refund of the sales tax. The observations of Viswanatha Sastri, J., in G.V. Subrahmanyam and Co. v. State of Andhra (1956) A.L.T. 695 at page 697 are directly in point and are as follows :

Even if they collected sales tax under the name of russum in order to protect themselves against a possible contingency of their being called upon to pay sales tax on the purchase turnover, it has still to be shown that the amounts collected were lawfully payable by way of tax to the State before they could be called upon to account for the collections.

7. On the same reasoning, the sales tax collected by the respondent not being a lawful collection does not preclude the appellant from recovering the sales tax collected from him.

8. In the result, the appeal is allowed in respect of the sales tax recovered on the turnover during the period 26th January, 1950, to 31st March, 1950, in regard to the transactions referred to supra. The amount will be determined by the Court below.

9. The appeal is allowed as aforesaid and the suit is remanded to the Court below for fixing the amount of the sales tax which the appellant is entitled to refund. The appellant will also be entitled to interest at 6 per cent per annum from the date of the notice of demand, i.e., 28th September, 1952. As the appellant has, partly failed, the parties will receive and pay proportionate costs in both the Courts.