

PETITIONER:
BHADRACHALAM PAPERBOARDS LTD. & ANR.

Vs.

RESPONDENT:
THE GOVERNMENT OF ANDHRA PRADESH & ORS.

DATE OF JUDGMENT: 04/08/1998

BENCH:
S.P. BHARUCHA, K. VENKATASWAMI

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

K. Venkataswami, J.

The appellants moved the High Court of Andhra Pradesh under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus to declare the action of the respondents in demanding and collecting sales tax from them on the royalty and extraction charges paid for the supply of bamboo and hardwood to them from the forest for the period 1978-79 onwards as illegal, null and void and for a consequential relief of refund of the taxes so collected from them.

The admitted facts are that the appellants entered into an agreement on 27.3.1978 with the State Government for supply of bamboo and hardwood from the Government forest on certain terms and conditions. The Sales Tax Department demanded and collected sales tax upon the value of the bamboo and hardwood removed by the appellants from the forest. Under the State sales Tax Act, during the relevant period the commodity (bamboo and hardwood) was exigible to tax at the first sale and as such the forest Department, who was a dealer, was liable to pay the sales tax. However, under the agreement mentioned above, the appellants undertook to reimburse the Forest Department the amount of sales tax payable on the supply of bamboo and hardwood. Both the appellants and the Revenue were under a mistaken impression that the supply of bamboo and hardwood from the Government forest under an agreement was exigible to tax. This court in state of Orissa & Ors. Vs. Titaghur paper Mills Co. Ltd. & Anr., etc. [1985 (suppl.) SCC 280] held that such supply of bamboo from the Government forest was not exigible to tax. It was on that basis the appellants moved the High Court for the relief set out above.

The High Court by the judgment under appeal held that no sales tax was payable by the appellants on the royalty and extraction charges payable by them under the Agreement entered into with the State for supply of bamboo and hardwood with effect from 1.11.85. However, the High Court declined to grant the refund of sales tax already collected for the period 27.3.78 to 31.10.85. The High Court, for denying the refund, was of the view that the manufacturer

(appellants) is presumed to have passed on the burden of tax to the consumer unless there are clear allegations and proof to the contrary. In the absence of such allegations and proof, the appellants must be deemed to have passed on the burden of tax to the consumers, which would disentitle them from seeking refund of the sales tax already paid.

Aggrieved by the judgment of the High Court denying the relief of refund, the present appeal has been filed by the appellants.

The learned counsel appearing for the appellants submitted that the High Court was not right in presuming that the appellants must have passed on the burden of tax to the consumers. He invited our attention to the case of the respondents advanced before the High Court. The High Court has observed thus:-

"He (the Government Pleader) submits that in the case of this petitioner the demand is not upon the petitioner upon the Forest Department as seller of the goods. He submits that according to the definition of the dealer, the Forest Department is also a dealer. He submits that both bamboo and hardwood are placed in the first schedule to the A.P. General Sales Tax Act which means that the tax is payable at the point of first sale in the State."

In the light of the above case of the Revenue as put forward before the High Court, it is the contention of the learned counsel for the appellants that the question of passing on the tax burden to the consumers would not arise in this case. According to the learned counsel, in view of the above stand taken by the Revenue before the High Court the relief of refund ought to have been allowed.

Mr. K. Ram Kumar, learned counsel appearing for the respondents, placing reliance on the judgment of this court in *Mafatlal Industries Ltd. & Ors. Vs. Union of India & Ors.* [(1997) 5 SCC 536] submitted that unless the appellants moved the appropriate forum to set aside the assessments already made for collecting the sales tax, the question of refund will not arise. In any case, learned counsel submitted that the refund cannot be ordered for more than three years preceding the filing of the writ petition.

We have seen that the appellants sought a declaration that the tax demanded and collected on the transactions in question for the period from 1978-79 onwards was illegal, null and void. The High Court in the light of the decision of this court in *Titaghur Paper Mills Co. Ltd. (supra)*, held that the transactions in question were not exigible to tax. The refund was, however, denied on the ground that the appellants must be deemed to have passed on the liability to the consumer.

We find that the High Court was not right in so presuming in the light of the case put forward by the Government pleader as extracted above. The appellants have reimbursed a tax liability which was on the Forest Department and the appellants have consumed the goods for manufacturing paper boards, etc. Therefore, the question of the appellants passing on the tax liability to the consumer, on the facts of this case, would not arise. Consequently, the appellants are entitled for refund of the tax collected from them, not for the entire period but for the period commencing three years prior to the date of filling of the

Writ Petition.

The appeal is accordingly allowed with no order as to costs.

JUDIS