PETITIONER:
RALLIS INDIA LTD.

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH

DATE OF JUDGMENT12/02/1980

BENCH:
KOSHAL, A.D.
BENCH:
KOSHAL, A.D.
PATHAK, R.S.

CITATION:
1980 AIR 749 1980 SCR (2)1028
1980 SCC (2) 315

ACT:
Central Sales Tax Act 1956-Section 15(b)-Scope of.

HEADNOTE:
On the ground that the dealers have not charged and collected Central Sales Tax during the period 1st April, 1969 to 9th June, 1969 the Commercial Tax Officer, allowed exemption under section 10 of the Central Sales Tax Act in respect of certain turn-over of the appellant which included the price realised on account of inter-state sales. In respect of a second set of transactions which involved the purchase value of cotton sold during the year through inter-state sales the Commercial Tax Officer held that the appellant was entitled to exemption under the proviso to section 6 of the A.P. General Sales Tax Act.

In 1972 section 15(b) of the Central Act was amended with retrospective effect from 1st October, 1958 and in 1974 section 6 of the State Act was amended with retrospective effect from the same date.

The Deputy Commissioner of Commercial Taxes revised the assessment order of the Commercial Tax Officer passed under the State Act on the ground that in view of the provisions of section 6 as amended in 1974 the appellant was not entitled to any exemption during the above period. The Sales Tax Appellate Tribunal dismissed the appellant's appeal on the view that section 6 of the State Act did not talk of any exemption either before or after its amendment in 1974. The High Court dismissed the appellant's appeal holding that the exemption granted by the C.T.O. was patently wrong.

Dismissing the Appeal,
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HELD: 1. Section 10 of the Central Act which makes no reference to any tax leviable under a State Act can be of no assistance to the appellant. Granting that the appellant did not collect any tax under the Central Act during the period in question on the ground that no such tax could have been levied or collected so that it becomes fully entitled to the benefit of the exemption enacted by the section, that would only mean that central sales tax cannot be charged from it in respect of sales covered by the section. No demand had been made from it for any tax leviable under the Central Act in respect of such sales and the appellant could not derive

any benefit from section 10 of the Central Act in the matter of its assessment under the State Act. [1033G-H]

2. In so far as the assessment under the State Act is concerned all that the C.T.O. could have meant by granting exemption was that the appellant became liable to pay a tax under the opening para of the section; but that since the appellant was also entitled to a refund of such tax the same was taken to have been paid by and refunded to it. The assessment order made
1029
under the proviso to section 6 of the State Act and section 15 (b) of the Central Act as they stood then was unexceptionable. [1034E-F]

3. Under section 6 as amended the liability to tax remained unchanged but the entitlement to refund was abolished an was substituted by a right to reimbursement of the tax which arose only if the concerned goods were later on sold in the course of inter-state trade under the Central Act and tax under that Act was paid in respect thereof. Such reimbursement would not be available merely because the goods in question had been sold in the course of inter-state trade or commerce when they were not subjected to tax under the Central Act. No such tax was paid. The proviso to section 6 as amended in 1974 can be of no assistance to the appellant. [1035A-B]

4. The language of clause (b) of section 15 of the Central Act is the same as that of the amended proviso to section 6 of the State Act. It clearly means that the tax under the State Act would be reimbursible only to a dealer who has paid tax under the State Act in respect of the sale of the goods in question in the course of inter-state trade or commerce.
[1035C-D]

5. The argument that the Deputy Commissioner had no power to cancel the order of refund is fallacious. He has done nothing more than to revise an order of the C.T.O. which has been varied only in so far as it was not in conformity with the law deemed to have been prevailing on the date of the assessment by virtue of the retrospective amendment of section 6 of the State Act. The Deputy Commissioner had not only the power but was duty bound to strike down the order of refund as being illegal. [1035F-G]

6. Rule 27A can be of little help to the appellant inasmuch as even if it can be construed as laying down something in its favour, the rule cannot override the provisions of the Act. [1036A]

Daita Suryanarayana and Company v. State of Andhra Pradesh 39 S.T.C. 500 approved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1897 of 1978.

From the Judgment and Order dated 19-9-1977 of the Andhra Pradesh High Court Tax Revision Petition No. 66/76.

S. T. Desai, T. A. Ramachandran, Mrs. J. Ramachandran and M. N. Tandon for the Appellant.

T. S. Krishnamoorthy Iyer, and B. Parthasarshi for the Respondent.

The Judgment of the Court was delivered by

KOSHAL, J. The question which falls for determination in the appeal by certificate granted by the High Court of Andhra Pradesh against its judgment dated the 19th September, 1977 is whether the appellant which is a limited

company is not liable to make good to the State Sales Tax authorities the amount of sales tax leviable under section 6 of the Andhra Pradesh General Sales Tax Act (hereinafter referred to as the A. P. Act) in respect of the turn-over covering the purchase by the petitioner of cotton during the period 1-4-1969 to 8-6-1969, which turn-over had been exempted from sales tax by
1030
the Commercial Tax Officer, No. II, Guntur (C.T.O. for short) in his assessment order dated the 30th of April, 1971.

2. Two assessment orders were passed by the C.T.O. on the date last mentioned. One of them covered the turn-over of the appellant liable to tax under the Central Sales Tax Act (hereinafter referred to as the Central Act). That turn-over included a sum of Rs. 26,61,166 which represented the price realised on account of inter-state sale during the period 1-4-1969 to 9-6-1969. In respect of this amount the order made by the C.T.O. was:

> "The dealers have not charged and collected Central sales Tax for the period from 1-4-69 to 9-6-69. The turnover of Rs. 26,61,166.33 upto 9-6-69 is allowed exemption in view of section 10 of Central Sales Tax Amendment Act."

The second assessment order was passed under the A.P. Act and therein the C.T.O., while considering a sum of Rs. 54,87,879/- being the purchase value of cotton sold during the year through inter-state sale, remarked that the appellant was entitled to 'exemption' under the proviso to section 6 of the A. P. Act in respect thereof. He finalised the assessment accordingly.

3. In the year 1972, clause (b) of section 15 of the Central Act was amended retrospectively so as to be effective from 1st October, 1958. Two years later, section 6 of the A.P. Act was also amended and made effective from the same date. On the 21st of August, 1974, the Deputy Commissioner (Commercial Taxes) hereinafter called the D.C.C.T.) issued a notice to the appellant calling upon it to show cause why the 'exemption' granted to it by the C.T.O. should not be cancelled. After receiving the appellant's reply, the D.C.C.T. revised the assessment order dated 30th of April, 1971, passed under the A.P. Act and held that in view of the provisions of section 6 thereof as amended in 1974 the appellant was not entitled to any 'exemption' in respect of the purchase price (amounting to Rs. 23,00,057/-) of cotton sold by it in the course of interstate trade for Rs. 26,61,166/- during the period 1-4-1969 to 8-6-1969. The order of the D.C.C.T. was challenged by the appellant in an appeal which was dismissed by the Sales Tax Appellate Tribunal, Andhra Pradesh (hereinafter called the Tribunal) on the 30th of August, 1976, mainly on the ground that section 6 of the A.P. Act did not talk of any 'exemption' either before or after its amendment in 1974. The appellant sought a revision of the Tribunal's order by the High Court under section 22(1) of the A.P. Act but remained unsuccessful as the High Court was of the opinion (for
1031
which it relied upon Vadivelu Chetty v. Commercial Tax Officer, Tirupathi(1) and Daita Suryanarayana and Company v. State of Andhra Pradesh(2) that the exemption granted by the C.T.O. was 'patently wrong'. The High Court however granted a certificate declaring the case to be a fit one for appeal to the Supreme Court under article 133(1)(c) of the Constitution of India read with section 109 of the Code of

Civil Procedure.

4. In order to appreciate the contentions raised on behalf of the appellant it is necessary to examine the various relevant legislative provisions which are set out below:

Section 10 of the Central Sales Tax (Amendment) Act, 1969 (hereinafter referred to as the 1969 Act).

"10. Exemption from liability to pay tax in certain cases.

(1) Where any sale of goods in the course of inter state trade or commerce has been effected during the period between the 10th day of November, 1961, and the 9th day of June, 1969, and the dealer effecting such sale has not collected any tax under the principal Act on the ground that no such tax could have been levied or collected in respect of such sale or any portion of the turn-over relating to such sale and no such tax could have been levied or collected if the amendments made in the principal Act by this Act had not been made, then, notwithstanding anything contained in section 9 on the said amendments, the dealer shall not be liable to pay any tax under the principal Act, as amended by this Act, in respect of such sale or such part of the turn-over relating to such sale.

(2) For the purposes of sub-section(1), the burden of proving that no tax was collected under the principal Act in respect of any sale referred to in sub-section (1) or in respect of any portion of the turn-over relating to such sale shall be on the dealer effecting such sale."

Section 6 of the A. P. Act as on 30-4-1971

"6. Tax in respect of declared goods- Notwithstanding anything contained in section 5, the sale or purchase of declared goods by a dealer shall be liable to tax at the rate, and only at the point of sale or purchase, specified against

1032

each in the Third Schedule, on his turn-over of such sales or purchases for each year irrespective of the quantum of his turn-over in such goods; and the tax shall be assessed, levied and collected in such manner as may be prescribed:

Provided that where any such goods on which tax has been so levied are sold in the course of inter-state trade or commerce, the tax so levied shall be refunded to such person, in such manner and subject to such conditions as may be prescribed."

The proviso to section 6 of the A. P. Act as amended in 1974 retrospectively with effect from 1-10-1958.

'Provided that where any such goods on which a tax has been so levied are sold in the course of inter-state trade or commerce and tax has been paid under the Central Sales Tax Act, 1956. in respect of the sale of such goods in the course of inter-state trade or commerce the tax so levied shall be reimbursed to the person making such sale in the course of inter-state trade or commerce, in such manner and subject to such conditions as may be prescribed."

Sub-rule (1) of rule 27-A of the Rules framed under the A.P. Act as on 30-4-1971

"Where any tax has been levied and collected under section 6 in respect of the sale or purchase inside the State of any declared goods and such goods are subsequently sold in the course of inter-state trade or

commerce, the tax so levied and collected shall be refunded to the person in the manner and subject to the conditions specified in sub-rules (2) to (4)."

Sub-rule (1) of the said rule 27A After its amendment 1-8-1974

"Where any tax has been levied and collected under section 6 in respect of the sale or purchase inside the State of any declared goods and such goods are subsequently sold in the course of inter-state trade or commerce, the tax so levied and collected shall be reimbursed to the person in the manner and subject to the conditions specified in sub-rules (2) to (4):

Provided that the refund shall not be made unless the tax payable under the Central Sales Tax Act is paid."

1033

Clauses (a) and (b) of section 15 of the Central Act as in force on 30-4-1971

"15. Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State- Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely:-

(a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall be levied only in respect of the last sale or purchase inside the State and shall not exceed two per cent of the sale or purchase price.

(b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-state trade or commerce, the tax so levied shall be refunded to such person in such manner and subject to such conditions as may be provided in any law in force in that State."

Clause (b) of section 15 of the Central Act as amended in 1972 retrospectively with effect from 1-10-1958

"(b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, and tax has been paid under this Act in respect of the sale of such goods in the course of inter-state trade or commerce, the tax levied under such law shall be reimbursed to the person making such sale in the course of inter-state trade or commerce in such manner and subject to such conditions as may be provided in any law in force in that State."

5. Section 10 of the 1969 Act makes no reference at all to any tax leviable under the State Act. It concerns itself only with the tax payable under the Central Act which it calls the 'Principal Act' and says that a dealer shall not be liable to pay any such tax for the period between 10-11-1964 and 9-6-1969 if certain conditions are satisfied. Much reliance has been placed by learned counsel for the appellant on this section which, in our opinion, however, is of no assistance to him. It may be taken for granted that the appellant did not collect any tax under the Central Act on the sale of goods effected by it in

1034
the course of inter-state trade during the period 1-4-1969 to 9-6-1969 on the ground that no such tax could have been levied or collected in respect of such sale, so that it becomes fully entitled to the benefit of the exemption enacted by the section; but that would only mean that Central sales tax cannot be charged from it in respect of such sale. As it is, no demand has been made from it for any tax leviable under the Central Act in respect of such sale and we do not see how the appellant could benefit from the said section 10 in the matter of its assessment for the period in question under the A.P. Act. All that we are concerned with is the liability of the appellant to pay tax on the purchase of cotton which it sold during that period in the course of inter-state trade and that is a matter which has to be decided with reference to section 6 of the A.P. Act, rule 27-A extracted above and section 15 of the Central Act.

6. As on 30-4-1971 the provisions of section 6 of the A.P. Act laid down that if goods were sold in the course of inter-state trade or commerce and tax had been levied on the sale or purchase there of under that Act, the dealer concerned would be entitled to refund of such tax. As on the date of assessment therefore the appellant was within its rights to claim refund of any tax that it was liable to pay on the purchase of cotton later sold by it in the course of inter-state trade; and although the section did not talk of any 'exemption', all that the C.T.O. could have meant by granting the appellant 'exemption' from the tax was that it became liable to pay a tax under the opening para of the section but as it was also entitled to a refund of such tax, the same was taken to have been paid by and refunded to it. As the section then stood therefore the assessment order was unexceptionable. This was also the position under clause (b) of section 15 of the Central Act the language of which is practically the same as of the proviso to section 6 of the A.P. Act.

7. The matter however does not end there as the amendment of section 15 of the Central Act in 1972 and that of section 6 of the A.P. Act in 1974 made a real difference which appears to us to be an insurmountable hurdle in the way of the appellant's stand being accepted. As already stated, both the amendments were retrospective so as to be effective from the 1st of October, 1958. That means that the law to be applied to the assessment finalised through the two orders dated 30th of April, 1971, by the C.T.O. was that as modified by the two amendments. Of course we are here concerned only with the order of assessment made under the A.P. Act. That order would be good if it is in conformity with the provisions of the amended section 6 of the A.P. Act but not otherwise. Under the amended section the liability to tax
1035
remained unchanged but the entitlement to refund was abolished and was substituted by a right to reimbursement of the tax which arose only if the concerned goods were later on sold in the course of inter-state trade or commerce under the Central Act and tax under that Act was paid in respect thereof. Such reimbursement would not be avaialable merely because the goods in question had been sold in the course of inter-state trade or commerce when they were not subjected to tax under the Central Act. Admittedly no such tax was paid by the appellant in the course of inter-trade on goods regarding the purchase of which reimbursement of the tax leviable under the A.P. Act is claimed. The proviso to

section 6 as amended in 1974 therefore is of no assistance to it.

8. Nor does the amended clause (b) of section 15 of the Central Act come to the appellant's aid, as the language used therein, for all practical purposes, is the same as that of the amended proviso to section 6 of the A.P. Act and clearly means that the tax under the A.P. Act would be reimbursible only to a dealer who has paid tax under the Central Act in respect of the sale of the goods in question in the course of inter-state trade or commerce.

9. Faced with the above situation, Mr. Desai, Learned counsel for the appellant, pressed into service a novel contention to the effect that the appellant was not asking for any reimbursement or refund, that it was the D.C.C.T. who had cancelled the order of refund (inherent in the 'exemption' granted by the C.T.O.) and that there was no provision authorising the D.C.C.T. to force the appellant to return any amount paid to it as a refund. The argument is obviously fallacious. The D.C.C.T. has done nothing more than to revise an order of the C.T.O. which has been varied only in so far as it was not in conformity with the law deemed to have been prevailing on the date of the assessment by virtue of the retrospective amendment of section 6 of the A.P. Act. It is conceded by Mr. Desai that the 'exemption' has to be regarded as a composite order of levy plus refund. That part of it which granted a refund was illegal under the amended proviso to section 6 of the A.P. Act inasmuch as no reimbursement was due in respect of goods on which tax under the Central Act had not been paid. The D.C.C.T. therefore had not only the power but was duty-bound to strike down the order of refund as being illegal. The order of the C.T.O. as revised by the D.C.C.T. thus is reduced to an order merely of levy of the tax due under the opening paragraph of section 6 of the A.P. Act so that the appellant becomes liable to pay such tax.

10. The only other argument put forward by Mr. Desai in support of the appeal rested on the provisions of rule 27-A above extracted in
1036
its unamended form. The rule can obviously be of no help to him inasmuch as even if it can be construed as laying down something in favour of the appellant it cannot override the provisions of the Act under which it is framed. No amount of argument would make a rule over-ride or control the legislative enactment under the authority of which it comes into being and that is why the rule was amended in 1974 so as to conform to the parent statute.

11. It may be stated that at one stage of the argument Mr. Desai drew our attention to the fact that by reason of the amendments made in the statute law and the consequent demand by the D.C.C.T. for the refunded amount the appellant had been placed under a burden which did not fall on those who collected the Central sales tax from the purchasers and paid it to the Government because they were held entitled to refund of the tax under the A.P. Act even though they had not paid anything out of their own pocket as tax under the Central Act. However, as he did not challenge the constitutional validity of any of the amended sections he did not pursue the matter further and we need take no further notice of it.

12. We might mention here that Daita Suryanarayana and Company's case (supra) on which the High Court relied in support of the impugned judgment takes a view of the law which is in conformity with the opinion expressed above by us and we unreservedly approve of the same.

13. In the result the appeal fails and is dismissed but with no order as to costs.

P.B.R. Appeal dismissed.

1037