

Cement bags are taxable separately as it is established that sale of cement and bags are separate transaction

Summary – The High Court of Andhra Pradesh in a recent case of Andhra Cements Co. Ltd., (the Assessee) held that CST & VAT: Andhra Pradesh VAT - Where assessee was engaged in business of manufacture and sale of cement and it had established that sale of cement and HDPE bags in which cement was packed was distinct and separate sale and there was a contract for such separate sale of cement and bags, sale of HDPE bags should be subjected to tax at rate applicable to it

Facts

- The assessee was engaged in the business of manufacture and sale of cement.
- For the relevant assessment year 1991-92, the Assessing Authority assessed the assessee and by invoking the provisions of section 6-C levied tax on the sale of packing material, *i.e.*, HDPE bags in which the cement was packed at the rate of 14.5 per cent, which was applicable to the sale of cement.
- On appeal, the assessee contended that the sale of packing material was separate from the sale of cement. The sale of packing material and cement was not an integrated sale. The turnover of packing material should be subjected to tax at the rate applicable to the HDPE bags and the exemption should be allowed on the sale of the packing material to the extent purchased from other local registered dealers and sold along with the cement.
- The First Appellate Authority accepted the contention of the assessee and allowed the appeal.
- Thereupon the Assessing Authority had given effect to the order of the First Appellate Authority and had passed consequential orders.
- Thereafter the Commissioner took revisional proceedings against the assessee. He held that the assessee had failed to prove that there was a separate sale of packing material and, therefore, there was only one integrated sale, *i.e.*, sale of cement with bags. Hence, the entire amount collected by the assessee in the invoice was to be taxed at the rate applicable to the cement. He, therefore, set aside the order of the First Appellate Authority and restored the original order of the Assessing Authority.
- On appeal to High Court:

Held

- The assessee is contending that there is a contract for separate sale of cement and the bags/packing material. It is the agreement and intention of the parties that the sale of cement and packing material/HDPE bags is distinct and separate sale. The sale of cement with packing material is not an integrated sale. Therefore, the packing material as well as the contents which are sold independently are to be assessed separately at the relevant rates of taxes applicable to cement and the bags respectively after extending necessary benefits of exemption to the extent applicable insofar as the HDPE bags/packing materials are concerned.

- On the other hand, the Commissioner had held on facts that the assessee had failed to establish that the sale of cement and packing material is distinct and separate. Thus the Commissioner had held that the sale of cement and packing material is an integrated sale.
- A reading of section 6-C, as it stood prior to its amendment in the year 1995 and as it stood after its amendment by Act 22 of 1995 with effect from 1-4-1995, would show that prior to the amendment of the section, it is permissible under law to have an agreement for the separate sale of packing material and the goods packed or filled. The question for consideration before the Court is a pure question of fact and the decision on the issue depends upon facts of the case.
- In the instant case, except the invoice there is no other contract. A reading of the invoice would clearly show that the sale of cement and packing material is not an integrated sale and the sale of cement and the sale of packing material is distinct sale. The invoice on a perusal would lay bare that the cement was sold in quantities of metric tonnes and the rate of cement and the cost of packing material are separately shown. Therefore, the invoice produced clearly establishes that there is a separate sale of packing material and there is no integrated sale of cement with HDPE bags/packing material. The assessee had not provided the bag free of cost considering the significant cost of the bag. Therefore, from the contents of the invoice, the contention of the assessee that there is a separate and distinct sale of cement and packing material appears to be correct. Then the next question is whether the invoice can be construed as a contract.
- There is no rebuttable evidence to rebut the presumption, which can be drawn, on the basis of the invoice which constituted an inclusive piece of evidence. Therefore, on facts the assessee is able to establish that the sale is not an integrated sale, but the sale of cement and packing material is distinct and separate. Therefore, when there is an agreement to sell separately the packing material and the goods packed or filled, the assessee can successfully contend that the sale of cement and the sale of packing material is different and distinct.

Conclusion

- The assessee had established that the sale of cement and the HDPE bags is not an integrated sale. The sale of cement and HDPE bags is distinct and separate sale. There was a contract for such separate sale of cement and the bags.
- Therefore, the impugned order of the Commissioner was liable to be set aside. The order of the First Appellate Authority and the consequential order of the Assessing Authority deserved to be restored.