

Andhra High Court

Modern Proteins Ltd. vs Food Corporation Of India on 12 August, 1982

Equivalent citations: 1983 52 STC 403 AP

Author: M Reddy

Bench: K M Reddy, P Kodandaramayya

JUDGMENT Madhava Reddy, Ag. C.J.

1. The petitioner, who is a registered dealer at Kurnool, entered into an agreement with the Food Corporation of India, through its Managing Director, New Delhi, for the supply of 4,000 metric tonnes of extracted edible groundnut flour at Rs. 1,930 inclusive of tax. It is common ground that the petitioner-company has been selling extracted edible groundnut flour and delivering the same at Madras and sending the invoices thereof to New Delhi. The petitioner-company requested the respondent to send C forms, envisaged by section 8 of the Central Sales Tax Act, 1956 (hereinafter called the Act), read with rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 (hereinafter referred to as the Rules). The Food Corporation of India, however, by its letter dated 19th September, 1980, refused to issue C forms on the ground that the rate quoted by the petitioner-company is inclusive of sales tax. The petitioner made further requests; but the respondent (Food Corporation of India) repeatedly rejected its request and finally on 19th February, 1981. A legal notice issued by the petitioner-company on 3rd March, 1982, calling upon the respondent-Corporation to issue C forms, did not bear any fruit. In the meanwhile, the Commercial Tax Officer, Kurnool, issued a notice dated 1st July, 1981, to produce the C forms; and on failure to do so, assessed the petitioner to tax at 10 per cent which is leviable on the turnover of intra-State sales. The petitioner therefore seeks a writ of mandamus to direct the Food Corporation of India to issue the C forms as envisaged by the Act and as requested by it in its letter dated 1st August, 1980.

2. Before proceeding to consider whether there is such an obligation on the part of the Food Corporation of India to issue C forms, we may notice the facts which are not in dispute. The petitioner is a registered dealer in Andhra Pradesh, having its office at Kurnool. Under the agreement, the goods to be supplied to the Food Corporation of India, are extracted edible groundnut flour. Though the bills and invoices referred to them as groundnut meal, so far as the Food Corporation India is concerned, irrespective of the fact whether it is described as groundnut flour or groundnut meal, it appears that the description of the goods as groundnut meal covers both the groundnut flour and groundnut meal as such. Consequently, the bills which described the goods either as groundnut meal or as groundnut flour, were accepted by the Food Corporation of India as is evident from the photostat copies of the bills produced before this Court. The petitioner is a registered dealer of the said goods, which were in fact delivered at Madras as per the invoices sent to New Delhi, as required under the agreement. There can be no doubt that the turnover covered by this transaction is an inter-State sale. The Food Corporation of India is also a registered dealer under the Central Sales Tax Act and all its Regional Offices under the Andhra Pradesh General Sales Tax Act. The sale is thus by a registered dealer in favour of a registered dealer. Under section 8(1) of the Central Sales Tax Act, every dealer, who in the course of inter-State trade or commerce sells to a registered dealer other than the Government, goods of the description referred to in sub-section (3), shall be liable to pay tax under this Act, which shall be four per cent of his turnover. There is no dispute that the goods in question are goods falling within the description referred to in sub-section

(3) of section 8 of the Act. Sub-section (4) of section 8 lays down that the provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner, a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority. Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957, prescribes the declaration and the certificate referred to in sub-section (4) section 8 as forms C and D respectively. Form D is to be furnished by the Government, when goods are sold to the Government and form C is to be furnished by a registered dealer, other than the Government, to whom goods are sold. The Food Corporation of India being the dealer to whom the goods were sold by the petitioner, it required the Corporation to issue the C forms.

3. Sri Venkatarama Reddy, the learned counsel for the Food Corporation of India, however contends that there is no statutory obligation imposed upon it expressly either by the Central Sales Tax Act or by the Rules made thereunder to issue C forms. According to him, the rules referred to above, merely enable a seller to pay sales tax at 4 per cent by producing C forms and avoid the enhanced rate of sales tax leviable in respect of the goods under the Andhra Pradesh General Sales Tax Act. Since there is no statutory obligation imposed upon the Corporation, it cannot be compelled to issue C forms. We are unable to agree with this contention. Section 8 of the Central Sales Tax Act makes it abundantly clear that if, in the course of inter-State trade or commerce, any sale is effected by a registered dealer, of the goods described in sub-section (3), the tax shall be only 4 per cent of the turnover. Inter-State sales attract only 4 per cent of tax, whereas intra-State sale attracts 10 per cent. In order to avoid controversy, the legislature intended the seller and the purchaser to furnish a declaration, and made a provision in sub-section (4) of section 8 requiring the registered dealer to whom the goods are sold, to file a declaration as prescribed by the Rules. Rule 12, in so far as it is relevant for the purpose of this case, reads as follows :

"12. (1) The declaration and the certificate referred to in sub-section (4) of section 8 shall be in forms C and D respectively :

(2)

(3) Where a declaration form furnished by the dealer purchasing the goods or the certificate furnished by the Government has been lost, the dealer selling the goods may demand from the dealer who purchased the goods or as the case may be, from the Government, which purchased the goods, a duplicate of such form or certificate, and the same shall be furnished with the following declaration recorded in red ink and signed by the dealer or authorised officer of the Government, as the case may be, on all the three portions of such form or certificate, -

'I hereby declare that this is the duplicate of the declaration form/certificate No. signed on and issued to who is a registered dealer of (State) and whose registration certificate number is' (4), (5), (6) and (7)

(8) (a) The person referred to in clause (a) of sub-rule (1) of rule 3 shall alone be competent to sign the declaration in form C or form F or the certificate in form E-I or form E-II :

Provided that where such person is a proprietor of any business or a partner of a firm or a karta or manager of a Hindu undivided family, any other person authorised by him in writing may also sign such declaration or certificate :

Provided further that in the case of a company, such declaration or certificate can also be signed by any other officer of the company authorised under the Memorandum or Article of Association of the company or under any other special or general resolution of the company or under a resolution passed by the Board of Directors of the company, to authenticate any document on behalf of such company.

(b) Such person shall signify on such declaration or certificate his status and shall make a verification in the manner provided in such declaration or certificate.

(9) and (10)"

4. From the above provisions and the form C prescribed in this behalf, it is clear that the registered dealer to whom the goods are sold, has to furnish form C. As contended by Sri Venkatarama Reddy, the learned counsel for the Corporation, that rule does not specifically lay down that the purchaser of the goods shall issue C form to the seller. But that obligation can be inferred from the intendment of the Act and the other specific provisions made in this behalf in regard to signing of the declaration in form C and the right of seller to pay only 4 per cent sales tax on inter-State sales. Sub-rule (3) of rule 12 makes a specific provision entitling the seller to demand from the dealer who purchased goods to issue a duplicate form in case the form already issued is lost. In sub-rule (8)(a) of rule 12, the person who is required to sign the declaration in form C referred to in clause (a), is stated to be the person referred to in clause (a) of sub-rule (1) of rule 3 and the proviso thereof specifies the persons who are required to sign in case the registered dealer is the proprietor of any business or a partner of a firm or a karta or manager of a Hindu undivided family; and in the case of a company, any other officer authorised by it. When the Act envisages that only a tax of 4 per cent is leviable in the case of inter-State sales and not 10 per cent under the Andhra Pradesh General Sales Tax Act in respect of such sales and entitles the registered dealer to pay this concessional rate of tax and prescribes the mode by which he can claim this concessional rate, it could not have been the intention of the legislature to defeat this provision at the sweet will and pleasure of the purchaser of the goods. Form C can be signed only by the purchaser of the goods and it is only by filing such forms, the registered dealer can take advantage of the provisions contained in section 8 of the Act; and that right cannot be defeated by the volition of another registered dealer who is the purchaser. It cannot be the intention of the legislature to deny this benefit upon the refusal of the purchaser to issue C forms and it is made clear by providing under sub-rule (3) of rule 12 that in case the original forms issued by the dealer are lost, the seller can demand the purchaser to issue a duplicate form, which necessarily implies that even initially there was such an obligation to issue C forms. Merely, because the contract does not stipulate that the Food Corporation of India shall issue C forms in regard to inter-State sales to its sellers, it cannot refuse to issue the forms to its seller who is entitled

to the benefit to section 8(1) of the Act only on production of such forms. Although there is no express provision requiring the Food Corporation of India or for that matter the Government and other non-Government bodies to issue C forms, there is an implied obligation to issue such forms in the case of inter-State sales so as to enable the registered dealer who has sold the goods described in sub-section (3) of section 8 in the course of inter-State sales, to pay lesser tax of 4 per cent under the Central Sales Tax Act and avoid the liability of paying 10 per cent sales tax under the Central Sales Tax Act in respect of his turnover. In this view of the matter, a writ of mandamus shall issue to the respondents to issue C forms in respect of the turnover covered by section 8(1) and (4) read with rule 12(1) and 12(8)(a) of the Rules referred to above, as requested by the petitioner-company in its letter dated 1st August, 1980, in respect of the above transaction. The writ petition is accordingly allowed. No costs.