

Supreme Court of India

Raj Sheel vs Commercial Tax Officer, ... on 26 March, 1998

Equivalent citations: (1997) 7 SCC 492, 2000 117 STC 314 SC

Bench: S Aggarwal, S S Ahmad, M Srinivasan

ORDER

1. The question raised for consideration in this appeal is whether the amount realised by way of sales tax can be included in the turnover for the purpose of levy of sales tax under the provisions of the Andhra Pradesh General Sales Tax Act and Rules, 1957 (hereinafter referred to as "the Act").

2. The appeal arises out of a writ petition which was filed by the appellant in the High Court of Andhra Pradesh wherein the appellant sought a writ or direction declaring that respondent No. 1 has no authority to include the sales tax collections in the turnover of the appellant from July 1, 1985. The appellant has based its case on the provisions contained in Sections 30-B and 30-C which were inserted in the Act by Act 18 of 1985 which came into force on July 1, 1985. It has been pointed out that subsequently by Act 4 of 1989, the said provisions have been omitted with effect from March 30, 1989. The question raised in the appeal is confined to the period from July 1, 1985 to March 30, 1989. It is not disputed before us that the appellant has made collection from the customers on the basis that the amount of sales tax would be part of the turnover. The amount collected has been paid by the appellant to the State because the recovery has not been stayed by this Court. The appellant is thus seeking the relief of refund of the excess amount so deposited even though he has passed on his liability in respect of this amount to the customers. Section 30-C(1) contained a provision enabling the State Government to forfeit either wholly or partly the amount which was collected in excess of the amount payable by way of sales tax by the customers. In the circumstances, we are of the view that this is not a case where any relief can be granted to the appellant in these proceedings arising out of a writ petition under Article 226 of the Constitution of India. We, therefore, do not propose to go into the question which has been raised and which has necessitated the reference to a large Bench by the order dated February 6, 1997. The appeal is, therefore, dismissed but the question raised is left open. No order as to costs.