

M/S. AMERICAN REMEDIES PVT. LTD. AND ANR.

A

v.

GOVT. OF ANDHRA PRADESH AND ANR.

JANUARY 12, 1999

[DR. A.S. ANAND, CJ., M. SRINIVASAN AND R.P. SETHI, JJ.]

B

*Andhra Pradesh General Sales Tax Act, 1957 : First Schedule—Entry 37—As amended by Amendment Act of 1996.*

*Sales Tax—Demand made for difference of sales tax arising as a result of amendment of Entry 37—Challenge by assessee—Held amendment was in exercise of the legislative powers of the State—Validity of amendment not questioned—Grievance of assessee that demand for differential tax could not have been made held wholly mis-conceived—Assessee is liable to pay tax—Whether he has collected it from consumer or not is of no consequence.*

C

D

*Collector of Central Excise v. New Tobacco Co. Etc. Etc., (1998) 1 SCALE 58; Shri Krishna Enterprises & Ors. v. State of Andhra Pradesh & Ors., (1990) 76 STC 67; Polychem Ltd. & Anr. v. State of Maharashtra & Ors., [1998] 6 SCC 196, held inapplicable.*

E

*The Income Tax Officer, Alleppy v. M.C. Ponnose and Ors. Etc., [1969] 2 SCC 351, referred to.*

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)  
Nos. 22942-22943 of 1997.

F

From the Judgment and Order 20.2.97 of the Andhra Pradesh High Court in W.P. No. 3296-97 of 1997.

B. Kanta Rao, Dr. M.V.K. Murthy and Ms. Sudha Gupta for the Petitioners.

G

K. Ram Kumar, Ms. Shanti Narayanan and Ms. Asha G. Nair for the Respondents.

The following Order of the Court was delivered :

H

A Following its earlier judgment in Writ Petition No. 2425 of 1997, which had been dismissed on 14.2.1997, a Division Bench of the High Court of Andhra Pradesh dismissed the writ petition filed by the petitioner herein, through which challenge had been made to the demand of difference of sales tax, which had occasioned as a result of an Amendment of Entry 37 of the First Schedule to the Andhra Pradesh General Sales Tax Act, 1957, by Act No. 27 of 1996. By virtue of Section 1(f) of the Amendment Act of 1996, the provisions of the Act, other than those mentioned in sub-clause (1), were to come into force with effect from 1.8.1996 and those provisions include amended Entry 37 (supra).

C That the State legislature had the power to amend the Andhra Pradesh General Sales Tax Act is not in dispute. It also is not disputed that the amendment made by the 1996 Act was in exercise of its legislative powers by the State legislature. The validity of the amendment had not been questioned either in the writ petition or even before us. That being the fact situation, the grievance made by learned counsel for the petitioner to the effect that the demand of differential tax based on the amendment of Entry 37 could not have been made, is wholly mis-conceived. It is settled position that an assessee is liable to pay sales tax and the question whether he has collected it from consumer or not is of no consequence. His liability is by virtue of being an assessee under the Act.

F Learned counsel relies upon *Collector of Central Excise v. New Tobacco Co. Etc. Etc.*, [1998] 1 SCALE 58. That judgment has no application whatsoever, as the amendment therein had been made by a *Notification* and not by any Amending Act of the legislature and in that context, it was held that since the act required publication of the Notification, the same could come into force on being so published and not prior to it. Reliance placed on *Shri Krishna Enterprises & Ors. v. State of Andhra Pradesh & Ors.*, [1990] 76 STC 67 is equally mis-conceived. The judgment does not deal with the issue at all. Learned counsel has then relied upon *Polychem Ltd. & Anr. v. State of Maharashtra & Ors.*, (1998) 6 SCC 196. That judgment again does not help the petitioner at all. As a matter of fact, in this judgment, relying upon *The Income Tax Officer, Alleppy v. M.C. Ponnose and Ors. Etc.*, [1969] 2 SCC 351, it has been reiterated that it is

open to the legislature to enact laws which have retrospective operation. A

In this view of the matter, we do not find any merit in these special leave petitions, which are dismissed with costs, which are quantified at Rs. 5,000.

T.N.A.

Petitions dismissed. B