(1991) 03 MAD CK 0043

In the Madras High Court

Case No : Tax Case (Appeal) No. 1102 of 1981

A.R. Manickam Chettiar and Sons — APPELLANT

Vs

State of Tamil Nadu — RESPONDENT

Date of Decision : 01-03-1991

Acts Referred:

Citation : (1991) 03 MAD CK 0043

Hon'ble Judges : A.S. Anand, C.J;Raju, J

Bench : Division Bench

Advocate : K. Mani, for the Appellant; R. Lokapriya, Government Pleader (Taxes), for the Respondent

Judgement

Dr. A.S. Anand, C.J.—The appellant is the assessee. They are dealers in paddy, rice and manure. The Deputy Commercial Tax Officer, assessing authority, determined the taxable turnover of the assessee at Rs. 44,632, as against the reported taxable turnover of Rs. 17,178 for the year 1977-78. The assessing authority found that the assessee had sold gunny bags along with the contents of paddy, rice, manure, etc., to the tune of Rs. 27,358.15. Being of the view that the gunny bags had been utilised in the course of business for sale of the goods, the assessing authority held the same to be liable to tax. Indeed, the dealer had not in the accounts maintained any separate account for the sale of the gunny bags.

2. Aggrieved, the assessee went up to the Appellate Assistant Commissioner in appeal. The Appellate Assistant Commissioner referred to rule 6(cc) of the Tamil Nadu General Sales Tax Rules, 1959, and opined that the charges for packing whether or not such amount is specified and charged for by the dealer separately in respect of the goods not liable to tax at the hands of the assessee are exempt from tax and he accordingly set aside the order of assessment in so far as it related to the addition for the packing material, that is, gunny bags. Accordingly the appellate authority gave relief in favour of the assessee. The Board of Revenue, on suo motu revision, found that the assessee was not eligible for the

deduction of the value of the gunny bags. This conclusion was arrived at by the Board after a reply was received to the notice issued to the assessee. The assessee had, in the reply to the notice, stated that the sale value of the contents included the cost of the gunny bags. The case of the assessee before the Board of Revenue was that since rice and paddy were exempt from tax, the containers in which the same were sold were also to be treated as exempt and would not be liable to be taxed. The plea was negatived by the Board of Revenue and it was held that if the exemption is granted to a particular commodity, it should be confined to that commodity alone and not to packing materials, if the packing material is otherwise subject to tax. The Board of Revenue consequently set aside the order of the Appellate Assistant Commissioner and restored that of the assessing authority in so far as the cost of packing material being included in the taxable turnover was concerned. The assessee has come up in further appeal to this Court.

3. Learned counsel for the appellant submitted that since the assessee had not separately shown the cost of the gunny bags, the same could not be subjected to tax. According to the learned counsel the sale of paddy and rice in the gunny bags was made by the dealer without separately charging for the gunny bags and, therefore, the price of gunny bags could not be added to the taxable turnover of the assessee. The other argument raised on behalf of the assessee by the learned counsel is that since paddy and rice were exempted articles for the purpose of sales tax, the gunny bags which were used as packing material of paddy and rice should also be treated as exempt and the same could not be subjected to sales tax. We have given our consideration to the submissions made at the bar.

4. The exemption under the Tamil Nadu General Sales Tax Act, 1959, is in respect of sale of paddy and rice. However, when those commodities are packed in gunny bags, the gunny bags cannot be said to lose their physical or commercial identity and merge as if they were part of the foodgrains themselves. The argument that since paddy and rice were exempt from sales tax and, therefore, no tax can be levied on the cost of the gunny bags in which they were packed in futile. When bags of paddy or rice are sold for a price which, as in the instant case as borne out from the reply of the assessee to the notice includes price of gunny bags, the turnover in respect of gunny bags would be liable to sales tax under the Act.

5. The Supreme Court in Commissioner of Taxes v. Prabhat Marketing Co. Ltd. [1967] 19 STC 84 considered a similar submission raised in that case and repelled it. In the case before the Supreme Court the dealer had sold hydrogenated oil which was exempt from sales tax under the Assam Sales Tax Act, 1947. The question which was raised before the Supreme Court was whether the value of the containers in which hydrogenated oil was sold could be assessed to sales tax under the Act. The High Court had held that the value of the containers was not assessable to sales tax unless price had been charged for the

containers. While rejecting the view of the High Court the Supreme Court held that the value of the containers was assessable to sales tax under the Act if there was an express or implied agreement for the sale of such containers and the mere fact that the price of the containers was not separately fixed made no difference to the assessment of sales tax.

6. In State of Tamil Nadu v. V. V. Vanniaperumal & Co. [1990] 76 STC 203, a Full Bench of this Court had also an occasion to consider a somewhat similar argument raised in that case. Approving the view taken by the Division Bench of this Court in K. Natarajan and Sons v. State of Tamil Nadu [1977] 39 STC 443, the Full Bench held that the price of the tin container, where the sale of oil had been made in tins, was not deductible as packing charges. Their Lordships of the Full Bench noticed with approval the submission made by the Additional Government Pleader in K. Natarajan and Sons v. State of Tamil Nadu [1977] 39 STC 443 , that since the dealer-company purchased oil in sealed tin containers and it sells the same as it is to the customers, no question of packing of oil by the dealer arose at all and there was no charge of packing as contemplated in rule 6 and thus no question of deduction of packing charges arises. Their Lordships noticed that what was sold was a tin of oil and not oil alone and a tin of oil would be composite goods and the bargain of sale was for tin of oil and it was held that the price of the goods, i.e., tin of oil is taxable.

7. In Raj Sheel v. State of Andhra Pradesh [1989] 74 STC 379 the Apex Court opined that a transaction of sale may consist of a sale of the product and a separate sale of the container housing the product with respective sale considerations for the product and the container separately; or it may consist of a sale of the produce and a sale of the container but both sales being conceived of an integrated components of a single sale transaction; or it may consist of a sale of the product with the transfer of the container without any sale consideration therefor. The question in every case will be a question of fact as to what is the nature and ingredients of the sale, and the event of tax depend upon the nature and character of the transaction.

8. In the instant case, in the reply to the notice the assessee had admitted that the price of gunny bags was included in the price of the rice or paddy. That shows that neither rice nor paddy by themselves were sold free nor the gunny bags were sold free. The price was inclusive. The question as to whether there is an agreement to sell packing material is a pure question of fact depending upon the circumstances of each case. Whether packing material was subject to any agreement, express or implied, needs to be determined and would depend upon the nature of the transaction. On the basis of the admission of the assessee and keeping in view the nature of the transaction that what was sold was not merely rice or paddy but the same along with the packing material, that is, gunny bags, the Board of Revenue rightly found that the price of gunny bags was liable to be included in the taxable turnover. The order of the assessing authority was, therefore, rightly restored by the Board of Revenue.

9. Thus, for what we have noticed above, we find that the order of the Board of Revenue does not call for any interference. This appeal, therefore, fails and is dismissed but we make no order as to costs.

10. Appeal dismissed.

