

(2011) 04 MAD CK 0478

In the Madras High Court

Case No : Tax Case (Revision) No. 919 of 2006

Ashoka Sweets

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 27-04-2011

Acts Referred:

Central Sales Tax Act, 1956 — Section 6A, 9(2)

Tamil Nadu General Sales Tax Act, 1959 — Section 16

Citation : (2011) 46 VST 275

Hon'ble Judges : P.P.S. Janarthanaraja, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : S. Ramanathan, for the Appellant; Radhakrishnan, Government Advocate (Taxes), for the Respondent

Final Decision : Allowed

Judgement

Chitra Venkataraman, J.—The assessee is on revision before this court as against the order of the Tribunal. The assessment year under consideration is 1993-94. The assessee herein, by name, Ashoka Sweets had a business in confectionery and sugar candy. The petitioner has a sister concern, by name, Ashoka Confectionary, registered as a dealer in Kerala. The assessee had an agency agreement with the sister concern, Ashoka Confectionary, which has an office at Pollachi as well as in Kerala. The petitioner transferred the goods to the agent, Ashoka Confectionary, who moved the goods from Pollachi to Kerala in its own vehicle for effecting sales in Kerala. The case of the assessee is that the agent furnished periodical sale pattials to the assessee herein apart from the statutory form F. Based on the details in form F, sale pattials, ledger extract of the principal herein as well as the agent, the assessing authority accepted the case of the assessee that the claim fell u/s 6A of the Central Sales Tax Act, entitled to exemption. Thus the assessee's claim on a total and taxable turnover of Rs. 12,01,300 was accepted and an assessment was completed by the assessing authority on November 30, 1994 granting exemption u/s 6A of the Central Sales Tax Act. Subsequent thereto, the assessment was sought to be reopened on the

ground that the consignee had taken delivery of the goods at Pollachi itself and that the movement of goods were noted in form XX delivery note as movement to "our branch". The assessing officer viewed that when the assessee had no branch in Kerala, the claim of the assessee has consignment sales could not be accepted. He further viewed that as the agent had taken possession in this State itself and only thereafter moved the same in its vehicle, the same amounted to a sale within the State assessable under the Tamil Nadu General Sales Tax Act. Thus the assessing authority proposed to withdraw the exemption granted u/s 6A of the Central Sales Tax Act and treated the sales as local sales, assessable under the Tamil Nadu General Sales Tax Act. The assessee objected to the said proposal. However, the assessing officer confirmed the proposal for reassessment under the provisions of the Tamil Nadu General Sales Tax Act treating the entire turnover as local sale.

2. Aggrieved by the same, the assessee preferred an appeal before the Appellate Assistant Commissioner, who, in turn, pointed out that form XX delivery notes contained the specific remark as "stock transfer to our branch". Thus if the goods were actually transported by the assessee to the agent, then they should have mentioned the destination point as "consignment stock to the agent". Admittedly, the assessee did not have a branch in Kerala. The first appellate authority pointed out that it was not known as to why the assessee had mentioned in form XX the word "our branch". In the light of the above, the first appellate authority held that the transactions were assessable under the provisions of the Tamil Nadu General Sales Tax Act. The first appellate authority also rejected the plea of the assessee that they had offered the turnover for assessment before the Kerala authorities. The first appellate authority further pointed out that the assessee had not produced the trip sheet or other records relating to the movement of goods. The vehicle also did not have the necessary route permit to travel to Kerala. The first appellate authority further pointed out that the agreement did not contain any clause as regards the transportation of the goods as well as for payment of commission. Thus, going through the materials, the first appellate authority rejected the case of the assessee, thereby confirmed the assessment. The assessee went on further appeal before the Tribunal, which once again confirmed the view of the Appellate Assistant Commissioner and dismissed the appeal. Aggrieved by the same, the present revision has been filed by the assessee.

3. The learned counsel appearing for the petitioner pointed out that barring the agent taking delivery within the State, there are hardly any materials for the Revenue to doubt the genuineness of the claim of the assessee. He further pointed out that the agent was a registered dealer in Kerala. He also had an office at Pollachi. Form XX, which contained the seal of Tamil Nadu check-post, Kerala check-post as well as the Revenue check-post, indicated that the goods had, in fact, crossed over to Kerala as that of the petitioner and that the Ashoka Confectionary was only an agent for effecting sales in Kerala. Considering the fact that form XX contained the name of the consignor and the consignee, the

reference as to the "consignment stock transfer to our branch", has to be read in as with reference to the consignee and not having any relevance to the petitioner-consignor. He further pointed out that when in the original assessment, the assessing authority had satisfied himself as to the claim of the assessee by verifying the details in form F, apart from the agreement on payment of commission as well as the accounts of the assessee as well as that of the agent, in the absence of any other material to discredit the details in form F, the claim could not be rejected u/s 16 proceedings. He further pointed out that there are no materials to doubt the truthfulness of the contents in form F. Thus, applying the decision of the Supreme Court reported in Ashok Leyland Ltd. Vs. State of Tamil Nadu and Another, , the re-assessment proceedings are illegal and could not be sustained.

4. Per contra, learned Government Advocate appearing for the respondent supported the orders of the authorities and contended that considering the agreement between the assessee and the agent not having any provision on payment of commission, the authorities below had rightly come to the conclusion that there was no evidence as regards the relationship of agency between the assessee and the so-called agent. In any event, form XX not containing any specific reference as to the agent's branch, would certainly throw light on the character of the transactions. Hence, no exemption could be taken to the findings of the authorities below.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondent and perused the materials placed before this court.

6. It is not denied by the Revenue that at the time of original assessment, the assessee had produced all the materials and the assessing officer had checked the details mentioned in form F that after satisfying himself as to the truthfulness of the claim made under form F, as evident from the order of the assessment passed on January 30, 1994, that the assessing officer granted the claim. He considered the following records:

1. Agreement copy
2. Copy of despatch advice
3. Form 13 copy
4. Form F
5. Sale pattials
6. Sale bill copy
7. Ledger extract of the principal account in the agent's books of account
8. K.G.S.T. Return copy in form A9 of the agent for all the 12 months
9. Account copy of the agent for the year 1993-94.

7. After verifying the details contained in form F and other records that the goods had moved through delivery notes in form XX, the assessing authority granted the relief accepting the return and that the entire turnover was exempted u/s 6A of the Central Sales Tax Act. A perusal of the reassessment order shows that there is hardly any reference to form F declaration, which was originally accepted by the officer as true and that the contents were checked with the other relevant records to find out that they are correct. The reassessment order further shows that it had not, in any manner, disturbed the acceptance of form F. Except for a mere statement that the agreement did not contain a clause on payment of commission and on transportation and that form XX merely referred to the movement as "our branch", nothing had been spoken to in the order of reassessment to touch on the details contained in form F. The first appellate authority as well as the Tribunal merely accepted the case of the Revenue on the ground on which the assessment was reopened. Evidently, none of those authorities considered the relevancy of the details in form F for the purpose of reopening the assessment.

8. As regards the jurisdiction of the assessing authority to reopen the assessment, in matters falling for consideration u/s 6A of the Central Sales Tax Act, as rightly pointed out by the learned counsel appearing for the petitioner, the Supreme Court had an occasion to consider the scope of section 6A of the Central Sales Tax Act with reference to section 16 proceedings in the decision reported in *Ashok Leyland Ltd. Vs. State of Tamil Nadu and Another*, wherein the apex court pointed out as follows (para 37, at page 502 in 134 STC):

36. By reason of sub-section (2) of section 6A, a legal fiction has been created for the purpose of the said Act to the effect that transaction has occasioned otherwise than as a result of sale.

On an analysis of the aforementioned provisions, therefore, the following propositions of law emerge:

(i) The initial burden of proof is on the dealer to show that the movement has occasioned by reason of transfer of such goods which is otherwise than by reason of sale. The assessee may file a declaration. On a declaration so filed an inquiry is to be made by the assessing authority for the purpose of passing an order on arriving at a satisfaction that movement of goods has occasioned otherwise than as a result of sale.

(ii) Whenever such an order is passed, a legal fiction is created.

Legal fiction, as is well-known, must be given its full effect.

9. Once a declaration has been accepted and acted upon by the Revenue, unless and until on further enquiry made thereto, the particulars furnished were found to be incorrect or untrue, the assessment once made based on form F, could not be reopened. The apex court pointed out that (page 509 in 134 STC):

...if such a declaration is filed and on an inquiry made pursuant to or in

furtherance of the particulars furnished are found to be correct by the assessing authority, the result thereof which is evidenced by the expression "thereupon" shall in view of the legal fiction created would be a transaction otherwise than as a result of an inter-State sale. Furthermore, once such a legal fiction is drawn, the same would continue to have its effect not only while making an order of assessment in terms of the State Act but also for the purpose of invoking the power of reopening of assessment contained in section 9(2) of the Central Act as well as section 16 of the State Act.

10. In the light of the law thus declared by the apex court that section 6A of the Central Sales Tax Act provided for a conclusive proof except on a limited ground that even after the amendment to the said provision, unless the details are found to be writ with fraud, collusion or misrepresentation or suppression of material facts, on a mere change of opinion, the findings, by themselves, would not go for any disturbance u/s 16 of the Act. Discovery of new materials, although may form a ground, it, by itself, would not be a ground for reopening of proceedings unless such discovery indicates a jurisdictional error.

11. Applying the said decision to the facts herein, as already pointed out, the entire reassessment rested on the fact that the consignee had an office within the State, i.e., at Pollachi. It is further pointed out by the assessing authority that the consignee took delivery of the goods and the goods started moving in the vehicle belonging to the consignee. The third ground on which reopening was done was that there was a specific remark in form XX that "consignment stock transfer to our branch". In the absence of any specific branch of the petitioner available in Kerala, the contention that the movement was not towards the agent's branch, hence, could not be accepted. The assessing authority further pointed out that the agreement did not mention anything about the transportation or as regards the payment of commission. Thus the entire reassessment rested only on the abovesaid facts and none of these materials were tested with reference to the details given in form F. Thus when the original assessment rested on the findings of enquiry with reference to the details in form F and the findings on form F thus remaining undisturbed even in the reassessment proceedings, applying the law declared by the apex court, we do not find that the reassessment order passed revoking the exemption granted u/s 6A of the Central Sales Tax Act could be sustained.

12. As regards the contention of the Revenue that the agreement did not contain any reference to transportation or payment of commission, it is relevant to note that the assessing authority, at the time of original assessment, had considered the accounts copy of the agent as well as the ledger extract of the principal account in the agent's books of accounts and on the payment of commission to the agent. The mere fact that the agent had an office at Pollachi or that he had taken delivery therein for further transportation in his own vehicle, per se, are not good grounds to reject the case of the assessee claiming exemption.

13. Barring the abovesaid aspects, the Revenue had no other material to

discredit the claim of the assessee. Hence, we do not find any justification in accepting the case of the Revenue that the transportation of the goods in the agent's vehicle would negate the claim of the assessee for the consignment sales u/s 6A of the Central Sales Tax Act. Quite apart from that, when the goods had passed through the check-post and that form XX contained the name of the assessee as well as the consignee, the mere fact that form XX referred to the destination as "our branch" could not be read just as having relevance to the petitioner and not to the agent. In the circumstances, we do not find any good ground for upholding the order of the Tribunal, which confirmed the order of assessing officer and the Appellate Assistant Commissioner. Consequently, we set aside the order of the Tribunal.

14. The learned Government Advocate appearing for the Revenue submits that in the event of this court accepting the case of the assessee, the order may be set aside and the matter may be remanded back to the assessing authority for a de nova enquiry.

15. We do not think that this court could grant such a prayer for a second innings to make up for its lapses in the reassessment proceedings to make a de nova enquiry at this distance of time. Considering the fact that at the time of reopening when the Revenue did not have materials at all to disturb the contents of form F and it was not the case of the Revenue that the particulars in form F were found to be untrue, no purpose would be served in remanding the matter back to the assessing officer. Hence, the said prayer of the Revenue stands rejected. In the result, the tax case (revision) stands allowed. No costs.