(1995) 01 MAD CK 0061

In the Madras High Court

Case No : Tax Case No. 268 of 1987

Associated Marketing Agencies APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 24-01-1995

Acts Referred:

Citation : (1995) 01 MAD CK 0061

Hon'ble Judges : T. Jayarama Chouta, J;K.A. Thanikkachalam, J

Bench : Division Bench

Judgement

Thanikkachalam, J.—The Associated Marketing Agencies, who is the assessee, is the petitioner herein. The assessee is the dealer in

electrical goods and electronic goods, glassware, milk boilers, etc. The assessee is doing its business at No. 93, Anna Salai, Madras 600 002. The

Domestic Fan Engineering (P) Ltd., Calcutta, are manufacturing Badal fans at Calcutta and the abovesaid manufacturing company is having a

branch office at No. 55, Harris Road, Madras 2. M/s. Anamika is the sister concern, having its head office at No. 1-A, Dr. Sarath Banerjee

Road, Calcutta, and the said Anamika is also having a branch office at No. 55, Harris Road, Madras 2. According to the assessee, Domestic Fan

Engineering (P) Ltd. had transferred Badal fans from its head office to its branch office at Madras, that the branch office of Anamika at Madras

has purchased Badal fans from the branch office of Domestic Fan Engineering (P) Ltd. and that the branch office of Anamika had sold Badal fans

to the assessee at Madras. But in the order of the assessing officer with regard to the sale turnover amounting to Rs. 5,36,667, the order runs as

under :

Similarly Badal fans are manufactured at Calcutta and are sent in the name of Domestic Fan Engineering (P) Ltd., in the guise of stock transfer.

The goods are intended for Associate Marketing Agencies, who are the wholesale distributors of the fans. But the goods are shown as having been

sold to Anamika who are said to be their sole selling agents. The assessees place indents on the Madras office of Anamika, a copy of the indent to

the head office at Calcutta. Against these indents, the goods were moved from Calcutta in the name of Domestic Fan Engineering (P) Ltd.

Verification of records reveals that these goods were moved from outside the State in pursuance of the contract and as such the purchases of the

assessees are to be assessed at 9 per cent single point.

The value of goods sold as per the invoice raised by Anamika, to the assessee, is stated to be Rs. 5,36,667. Along with that, 10 per cent gross

profit is added and the estimated sale turnover comes to Rs. 5,90,334, on which tax was levied at 9 per cent.

2. However, on appeal, the assessee contended before the Appellate Assistant Commissioner that the assessees are only second sellers and the

first sale was effected by Domestic Fan Engineering (P) Ltd., which has got the branch office at Madras, to M/s. Anamika. Therefore, the

assessee, who had purchased fans from Anamika, are only subsequent sellers and the liability to tax as first seller arises either at the ends of the

branch office of Domestic Fan Engineering or at the ends of Anamika, as per the decision in Balabhagas Hulaschand Vs. State of Orissa, .

However, the Appellant Assistant Commissioner came to the conclusion that the assessee is only a third seller and inasmuch as the tax was paid by

the first seller or by the second seller, there is no necessity for the assessee to pay the tax. Accordingly, the tax on Rs. 5,90,334 was deleted.

3. The assessee filed appeal before the Tribunal with regard to some other additions made by the Appellate Assistant Commissioner. In the said

appeal, the department filed an enhancement petition contending that the Appellate Assistant Commissioner was not correct in deleting the tax

levied on the sale turnover of Badal fans. The Tribunal, relying upon four letters, came to the conclusion that the goods were directly despatched to

the assessee and the sale by the assessee is the first sale and therefore, accordingly, the Tribunal levied tax on the sale turnover of Rs. 5,90,334. It is against this order, the assessee is in revision before this Court.

4. The learned counsel appearing for the assessee submitted that the assessee has purchased these goods from M/s. Anamika and the said

company Anamika purchased the goods from Domestic Fan Engineering. The Domestic Fan Engineering collected tax at 9 per cent on the sale

and paying the same to the State. Therefore, M/s. Anamika and the assessee, who are the second sellers and third sellers, are not liable to pay the

tax since the tax on fans are leviable at 9 per cent single point. The learned counsel further pointed out that all the correspondence relied upon by

the Tribunal will go to show that the goods were not directly delivered by the Calcutta manufacturers to the assessee at Madras. In the absence of

the nexus between the goods despatched by the Calcutta head office and the receipt by the assessee at Madras, it cannot be said that the assessee

purchased the goods directly from the Calcutta head office. There is also no evidence on the side of the department to show that the assessee

raised invoices for purchasing the goods from the Calcutta head office and the Calcutta head office, instead of sending the goods directly to the

assessee, sent the goods to their branch office at Madras in the name of the assessee. It was further submitted by him that in the orders passed by

the assessing officer, the Appellate Assistant Commissioner and the Tribunal, there was no mention as to what are the numbers of fans said to have

been delivered by the Calcutta head office directly to the assessee. In the assessment order, there is no particulars as to how the figure of Rs.

5,36,667 was arrived at. The final figure of Rs. 5,90,334 was arrived at by the assessing officer by adding 10 per cent gross profit to Rs.

5,36,667. The basis for arriving at such a figure is also not mentioned in the order passed by the assessing officer. The learned counsel appearing

for the assessee also produced the bills relating to Domestic Fan Engineering (P) Ltd. and the bills relating to M/s. Anamika. In the bills relating to

Domestic Fan Engineering (P) Ltd., there was mention of collection of tax at 9 per cent on the sale value of the Badal fans. The learned counsel

further submitted that there is no evidence on record to show that the letters relied upon by the Tribunal are relating to the present transaction. In

view of all these facts, it was submitted that the Tribunal was not correct in setting aside the order passed by the Appellate Assistant

Commissioner.

5. On the other hand, the learned Additional Government Pleader (Taxes) while supporting the order passed by the Tribunal, submitted that the

letters considered by the Tribunal and other correspondence would go to show that the assessee placed orders for Badal fans from the Calcutta

head office and in pursuance of the said orders, fans were sent to their branch at Madras in the name of the assessee and therefore, it was inter-

State sale that took place in the present case. Accordingly, the sale effected by the assessee would be the first sale liable to be taxed under the

Tamil Nadu General Sales Tax Act. According to the learned Additional Government Pleader, the link between the despatch of goods by the

Calcutta head office to its branch at Madras would go to show that under the camouflage of sending the goods to its branch at Madras, actually

the goods were sent for delivery to the assessee. The learned Additional Government Pleader submitted that the circumstantial evidence gathered

from the correspondence between the assessee and the Calcutta head office would go to show that the assessee purchased the goods from the

Calcutta head office and it is not correct on the part of the assessee to state that the goods were purchased from M/s. Anamika at Madras. The

learned Additional Government Pleader further submitted that the bills relating to Domestic Fan Engineering (P) Ltd., and the bills relating to M/s.

Anamika cannot be accepted without due verification. Accordingly, the learned Additional Government Pleader (Taxes) justified the tax levied at 9

per cent on the sale turnover of Badal fans.

6. We have heard the rival submissions.

7. The fact remains that assessee is the dealer in electrical goods, etc. Domestic Fan Engineering (P) Ltd., Calcutta, are manufacturing Badal Fans

at Calcutta. They are also having a branch at Madras. M/s. Anamika is the sister company having its head office at Calcutta and a branch at

Madras. According to the assessee, it purchased Badal fans from branch office of Anamika at Madras. M/s. Anamika purchased the said fans

from the Domestic Fan Engineering (P) Ltd., at Madras. It was further submitted that the bills issued by the Domestic Fan Engineering (P) Ltd.,

would go to show that tax on the sale turnover of Badal fans was collected at 9 per cent. Therefore, according to the assessee, inasmuch as the

Domestic Fan Engineering (P) Ltd., had already paid the tax on the sale turnover of Badal fans, it is not necessary for the assessee to pay the tax

once again. But according to the department, the assessee has purchased the fans directly from the Domestic Fan Engineering at Calcutta.

Therefore, it is an inter-State sale and the sale of fans by the assessee would be the first sale, liable to be taxed under the Tamil Nadu General

Sales Tax Act. In order to support this contention, the Tribunal relied upon several letters between Anamika at Calcutta and the assessee for

accepting the case put forward by the department. Letter dated April 1, 1981 is sent by Anamika at Calcutta to the assessee. According to the

said letter, Anamika at Calcutta, despatched 450 fans as desired by the assessee in its letter dated March 28, 1981. The abovesaid letter also

discloses that the company at Calcutta had sent consignments as desired by the assessee at Madras. In another letter dated April 1, 1981, the

company Anamika at Calcutta informed the circumstances due to which there was increase of price in the materials. There is also another letter

dated April 1, 1981, wherein the company Anamika at Calcutta acknowledged the debit sent by the assessee. In the letter dated March 24, 1981,

the company Anamika at Calcutta informed the assessee regarding the despatch of goods through M/s. Madras Transport Corporation of India to

the assessee. Therefore, the Tribunal came to the conclusion that the assessee was placing orders only with the company Anamika at Calcutta and

not through the office of Anamika at Madras. These letters were also relating to the assessment year 1981-82. But it remains to be seen that the

bills were prepared in the name of its branch office at Madras. There was no explanation as to why the bills were prepared in the name of the

branch office at Madras while the orders were said to be placed directly to the company at Calcutta and the goods were said to be despatched

from Calcutta. In spite of all these correspondence, there is no evidence on record to show that the assessee took delivery of the goods said to

have been sent by Anamika at Calcutta to Madras. Admittedly, the goods were sent by company Anamika at Calcutta to its branch office and bills

issued by the branch office of Anamika at Madras would go to show that the goods were sold to the assessee by the branch office of Anamika of

Madras. The bills of the Domestic Fan Engineering (P) Ltd., produced before us would go to show that tax at 9 per cent was collected on the sale value of the Badal fans. The bills were raised in the name of Anamika, Madras. The bills produced by Anamika at Madras would go to show that

the Badal fans were sold to the assessee by the branch office of Anamika at Madras. In order to make the assessee liable to pay the tax on the

sale value of Badal fans, the link must be established, between the goods said to have been sent by the Calcutta head office to the assessee directly

and the said goods were received by the assessee at Madras. In spite of all these correspondence, the said link is missing.

8. Reliance was placed upon a decision of this Court in Indian Duplicators Ltd. v. State of Tamil Nadu [1984] 57 STC 263. According to the

facts arising in that case, the assessee, a manufacturer and dealer in duplicators, its accessories and duplicating equipments, etc., in Madras with

branches outside, despatched goods to its Hyderabad branch and the branch office supplied the goods to local buyer against orders placed by the

buyers with the branch office at Hyderabad. There was no contract for supply of goods by the Madras office to the Andhra Pradesh buyer. The

bills were raised and collected in the name of the branch office at Hyderabad and sales tax was also paid according to the rats prevailing in Andhra

Pradesh. But the goods had the mark of the Andhra Pradesh buyer''s name to them. The assessee claimed exclusion of such turnover on the

ground that it represented stock transfer from Madras to the Hyderabad branch. On these facts, this Court has held :

.......though there was a movement of goods from Madras to Hyderabad, such movement was of goods manufactured in the ordinary or general

course of business of the assessee and for being sold as and when the manufacturers received orders for purchase at its branch office at

Hyderabad. There was no establishment of any direct link or nexus between the assessee and the movement of goods for supply to the Andhra

Pradesh buyer, especially when the goods despatched by the assessee were manufactured by it in the ordinary course of its business. The mere

fact that the mark of the Andhra Pradesh buyer''s name was found on the goods would not necessarily lead to the conclusion that there was a

completed transaction of sale by the assessee in Madras by the appropriation of the goods towards any contract. Therefore, the transaction was

not to be regarded as representing inter-State sales effected by the assessee.

Reliance was also placed upon another decision of this Court rendered in the case of State of Tamil Nadu v. Hercules Rubber Co. 1983 54 STC

85. According to the facts arising in that case, the assessee manufactured certain goods in Madras and had their branch office at Vijayawada, in

Andhra Pradesh. The various purchasers in Andhra Pradesh placed orders with the assessee''s branch office there. Subsequently, at the instance of

the branch office, goods were despatched by the assessee to the branch office. The branch office took this into their stock and subsequently

delivered them to its purchasers. On the question whether the transactions were in the nature of branch transfer or inter-State sales, this Court has

held as under :

........in the instant case there was no direct link between the assessee in Madras and the buyers in Andhra Pradesh. The contract of sale had been

entered into between the assessee''s Andhra Pradesh branch and the local buyers. In view of the fact that there was no direct link between the

assessee who was in Madras and the dealers of Andhra Pradesh, the despatch of the goods could not be taken to have been occasioned by the

contract of sale entered into by the assessee''s branch with the local buyers. Therefore, the transactions were only in the nature of branch transfers

and not inter-State sales. Even if the assessee had put markings on the consignments which were sent by lorries in the names of the purchasers, that

was not sufficient to bring about a contract of sale between the assessee and the ultimate buyer in Andhra Pradesh.

While considering whether there is any completed contract of sale on the facts available on record, in the decision in Tata Engineering and

Locomotive Co. Ltd. v. Assistant Commissioner of Commercial Taxes 1970 26 STC 354 at 381, the Supreme Court observed as under :

Another serious infirmity in the order of the Assistant Commissioner was (a matter which even the Advocate-General quite fairly had to concede)

that instead of looking into each transaction in order to find out whether a completed contract of sale had taken place which could be brought to

tax only if the movement of vehicles from Jamshedpur had been occasioned under a covenant or incident of that contract the Assistant

Commissioner based his order on mere generalities. It has been suggested that all the transactions were of similar nature and the appellant''s representative had himself submitted that a specimen transaction alone need be examined. In our judgment this was a wholly wrong procedure to

follow and the Assistant Commissioner, on whom the duty lay of assessing the tax in accordance with law, was bound to examine each individual

transaction and then decide whether it constituted an inter-State sale exigible to tax under the provisions of the Act.

9. A perusal of the abovesaid would go to show that unless the link is established that goods despatched from the head office at Calcutta was

received by the assessee at Madras, it cannot be said that the goods were purchased out of inter-State sale. In the present case, the assessee has

produced bills raised by Domestic Fan Engineering (P) Ltd., Madras, wherein Badal fans were sold to M/s. Anamika at Madras. In the bills it is

shown that tax at 9 per cent was collected. If this information was brought to the notice of the department, that would be sufficient for the assessee

to establish his case. Thereafter, it is for the department to establish the sale. This, obviously, appears to have not been done. When the tax on the

goods were paid once by Domestic Fan Engineering (P) Ltd., it is not necessary for the assessee to pay the tax once again. Thus, considering the

facts arising in this case in the light of the judicial pronouncements cited supra, we are of the opinion that the order passed by the Tribunal restoring

the assessment made by the assessing officer with regard to the levy of tax on the sale turnover of Badal fans appears to be unsustainable.

Accordingly, the order passed by the Tribunal on this aspect is set aside.

10. In the result, the revision filed by the assessee stands allowed. However, there will be no order as to costs.

11. Petition allowed.