

(1979) 11 MAD CK 0054

In the Madras High Court

Case No : T.C. No. 245 of 1977 (Appeal No. 18 of 1977)

Bapalal and Co.

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 22-11-1979

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu General Sales Tax Act, 1959 — Section 17, 3, 4, 5, 7A

Citation : (1980) 46 STC 498

Hon'ble Judges : Sethuraman, J; Balasubrahmanyam, J

Bench : Division Bench

Advocate : T. Srinivasamoorthy, for the Appellant; P. Suryaprakasam, for the Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Sethuraman, J.—This appeal has been filed against the order of the Board of Revenue (Commercial Taxes) dated 24th June, 1976. The assessee is a fairly large dealer in jewellery. It reported a total and taxable turnover of Rs. 43,60,650.51 and Rs. 41,35,708.08 respectively for the assessment year 1969-70. The assessing officer found that the assessee had purchased old and worn-out ornaments from customers and utilised the articles for the manufacture of new jewellery for sale. Such purchases of old articles had not, in his view, suffered tax earlier since they had been purchased in the circumstances in which no tax was payable by the vendor. The assessing officer subjected an estimated turnover of Rs. 5,00,000 to tax at 3 per cent u/s 7-A of the Act. On appeal, the Appellate Assistant Commissioner held that there was no liability u/s 7-A of the Act in view of the decision of this Court in M. K. Kanda-swami v. State of Tamil Nadu [1971] 28 S.T.C. 227 and remanded the case back to the assessing officer for fresh disposal in accordance with the decision of this Court. By his order dated 26th October, 1971, the Joint Commercial Tax Officer cancelled the assessment to the extent made u/s 7-A of the Act.

2. The order of the Appellate Assistant Commissioner was examined by the Board in the light of the decision of the Supreme Court in *State of Tamil Nadu v. M. K. Kandaswami* [1975] 36 S.T.C. 191. It was considered that the order of the Appellate Assistant Commissioner in setting aside the assessment u/s 7-A is not correct and it was, therefore, proposed to restore the assessment on the turnover of Rs. 5,00,000. The assessee's objections were called for and by the impugned order, the Commissioner of Commercial Taxes held that the turnover of Rs. 5,00,000 should be restored in the assessment. He, however, directed levy of tax at one per cent as bullion u/s 7-A of the Act with reference to the said turnover. This order of the Board of Revenue is the subject-matter of the present appeal.

3. Section 7-A of the Act provides for the levy of purchase tax under certain circumstances, and it runs to the extent relevant, as follows :

Every dealer who in the course of his business purchases from a registered dealer or from any other person, any goods (the sale or purchase of which is liable to tax under this Act) in circumstances in which no tax is payable u/s 3, 4 or 5, as the case may be, and either,-

(a) consumes such goods in the manufacture of other goods for sale or otherwise; or

(b) disposes of such goods in any manner other than by way of sale in the State; or

(c) despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce,

shall pay tax on the turnover relating to the purchase aforesaid at the rate mentioned in Section 3, 4 or 5, as the case may be, whatever be the quantum of such turnover in a year.

4. It is unnecessary to reproduce the rest of the provision. This provision came up for consideration, as mentioned earlier by a Bench of this Court in *M. K. Kandaswami v. State of Tamil Nadu* [1971] 28 S.T.C. 227. That was a group of cases in which the dealers had purchased arecanuts from agriculturists and thereafter transported those goods outside the State for sale on consignment basis. There was also purchase of gingelly seeds from agriculturists and the gingelly seeds were crushed into oil by them. In other cases, there were purchases of butter from householders which was converted into ghee. There were also purchases of turmeric and grams from agriculturists and then transported outside the State for sale on consignment basis. The Joint Commercial Tax Officer held that in respect of these transactions in the respective cases, the dealers were liable to pay purchase tax u/s 7-A of the Act on the purchase price of the goods which were either consumed in the manufacture of other goods for sale or which were disposed of in the manner contemplated by Section 7-A. On receipt of notice proposing to make

assessments u/s 7-A, the respective dealers filed writ petitions under Article 226 of the Constitution in this Court challenging the validity of the pre-assessment notices. The High Court accepted the contention of the assesseees that the circumstances contemplated by Section 7-A did not include the possibility or impossibility of verifiability of the transactions with the dealers from whom the petitioners had purchased the goods and that if the purpose of Section 7-A was to check evasion, the phraseology has fallen short of achieving that purpose. In this Court's view, the language of Section 7-A was far from clear as to its intention and the Joint Commercial Tax Officer was held to be not justified in invoking Section 7-A. The judgment of this Court was taken on appeal to the Supreme Court by the State. In the course of its judgment reported in 36 S.T.C. 191, the Supreme Court held that the interpretation placed by the learned Judges of this Court on Section 7-A was not correct. At page 197, it was pointed out:

The words "the sale, or purchase of which is liable to tax under the Act" qualify the term "goods" and exclude by necessary implication goods, the sale or purchase of which is totally exempted from tax at all points u/s 8 or Section 17(1) of the Act. The goods so exempted-not being "taxable goods"-cannot be brought to charge u/s 7-A.

5. Thus exempted goods would fall outside Section 7-A. Further, in the same page, it was pointed out:

Notwithstanding the goods being "taxable goods", there may be circumstances in a given case, by reason of which the particular sale or purchase does not attract tax u/s 3, 4 or 5. Section 7-A provides for such a situation and makes the purchase of such goods taxable in the hands of the purchasing dealer on his purchase turnover if any of the conditions (a), (b) and (c) of Sub-section (1) of Section 7-A is satisfied.

6. In the case of taxable goods, if no tax was paid by the sellers because they were not liable to tax, Section 7-A was attracted. At page 201, towards the close of the judgment, it was observed :

It (7-A) creates a liability against a dealer on his purchase turnover with regard to goods, the sale or purchase of which though generally liable to tax under the Act have not, due to the circumstances of particular sales, suffered tax u/s 3, 4 or 5, and which after the purchase, have been dealt by him in any of the modes indicated in Clauses (a), (b) and (c) of Section 7-A(1).

7. It is this judgment that is sought to be applied by the Board of Revenue for bringing to tax the assessee for the estimated turnover of Rs. 5,00,000.

8. The learned counsel for the assessee contended that the goods, which were dealt with in this case, were goods described in the First Schedule to the Act, that in respect of such goods, there was only a single point liability and that, in the present case, the goods having already suffered tax when they were sold to

the customers, cannot be brought to tax by proceeding u/s 7-A, when they were purchased from them. It is this aspect which requires to be considered now.

9. Section 3 of the Tamil Nadu General Sales Tax Act provides in Sub-section (1) that every dealer, whose total turnover for a year is not less than Rs. 50,000 and every casual trader or agent of a non-resident dealer, whatever be his turnover for the year, shall pay a tax for each year at the rate of 4 per cent of his turnover. The minimum of Rs. 50,000 and the rate of 4 per cent have undergone modifications from time to time. Sub-section (2) of Section 3 provides that notwithstanding anything contained in Sub-section (1) in the case of goods mentioned in the First Schedule, the tax under this Act shall be payable by a dealer, at the rate and only at the point specified therein on the turnover in each year relating to such goods whatever be the quantum of turnover in that year. Item 15 of the First Schedule deals with bullion pure or alloy and specie. Such goods are taxable at the point of first sale in the State and the rate of tax at the relevant time was one per cent. It has since been increased to 2 per cent.

10. The learned counsel for the assessee contended that in so far as the identical goods had already suffered tax at the time of sale by the assessee to the parties, who later on brought the same goods and sold them, it should be held that the goods had already suffered tax and that they cannot be taxed over again in view of the mandate in Section 3(2). This contention, for being appreciated, requires mention of a few more facts. Certain typical bills were placed before us in order to show how the assessee effects his transactions. For instance, in a bill dated 18th August, 1969, there is an order received from a party for making a Thirumangalyam of 22 ct. gold, two sets. The order number is 2619. The assessee, after manufacture, prepared a bill as follows :

22 ct. gold 2 sets of Thirumangalyam and 4 gundus, weight 17.250 grams. No. 1852 at Rs. 17.25 a gram Rs. 297.56 Making charges Rs. 30 each set Rs. 60.00 Rs. 357.56 Sales tax at 3 per cent Rs. 10.74

Rs. 368.30 Less advance paid on 25-6-1969 Rs. 200.00 Rs. 168.30

11. Even in a case where the assessee had already manufactured jewellery, without receipt of any order, and kept them in the show-room, the making charges are collected and the charge or the price of bullion is separately collected. The assessee has charged sales tax wherever the goods were made on order. On the sale of ready-made goods, there is no collection of sales tax. The purchasers had already been billed, at the time of sale to them, as regards sales tax and when the parties brought the identical goods, then the goods are taken back at the actual weight and the price paid is based on the ruling price of the bullion on that date. The manufacturing charges would be the loss sustained by the person who brings back the ornament. The assessee has also made its own mark on the manufactured jewels and it is only those jewels that the assessee takes back, without any further verification, and pays the ruling price of the bullion on that date. It is on these facts that the submission is that the

transaction having already suffered tax, the assessee cannot be made liable to further tax u/s 7-A as it cuts at the root of the single point levy u/s 3(2).

12. We are unable to accept this submission. The Supreme Court has pointed out in more than one place in *State of Tamil Nadu v. M.K. Kandaswami* [1975] 36 S.T.C. 191 that Section 7-A is a separate charging provision and that it is not subject to Section 3(2). For instance, at page 197, it is observed :

The words "under the Act" will evidently include a charge created by Section 7-A also. It is to be noted that Section 7-A is not subject to Section 3; it is by itself a charging provision. Section 7-A brings to tax goods the sale of which would normally have been taxed at some point in the State, subsequent to their purchase by the dealer if those goods are not available for taxation, owing to the act of the dealer in (a) consuming them in the manufacture of other goods for sale or otherwise, or (b) despatching them in any manner other than by way of sale in the State, or (c) despatching them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce.

13. At page 201 also it was stated :

We have pointed out and it needs to be emphasised again that Section 7-A itself is a charging section.

14. Thus, having regard to the separate charge effected u/s 7-A, it is not possible to accept the submission that it has to be read only subject to Section 3(2). Section 7-A contemplates liability to tax on the purchases in cases where the person from whom the assessee purchases the goods is one by whom no tax is payable u/s 3, 4 or 5, as the case may be. That is the position here.

15. In the present case, the vendors to the assessee are all persons who are not liable to pay tax because they are not dealers under the Act at all. In the circumstances, the primary condition which attracts the liability u/s 7-A is satisfied in the present case. The only other condition that is to be satisfied is, whether the goods were consumed in the manufacture or whether they were disposed of in any manner other than by way of sale in the State or whether they were despatched to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce. In the present case, it is not in dispute that the goods or bullion were consumed in the manufacture of other goods for sale or otherwise as contemplated by Clause (a). In the circumstances, it has to be held that both the conditions imposed by Section 7-A for creating the charge are satisfied.

16. The learned counsel for the assessee drew our attention to the object of incorporating Section 7-A in the statute and, for this purpose, he relied on the following passage in the Statement of Objects and Reasons appended to the Tamil Nadu General Sales Tax (Amendment) Bill, 1970, occurring at page 64 in the statutes portion of 25 S.T.C., and running as follows :

As a measure of checking evasion of sales tax, it has been decided to levy a tax

on the purchase of goods within the State, in respect of which no tax has already been levied either on the sale point or on the purchase point under the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of 1959), by any dealer who consumes such goods in the process of manufacture of other goods or disposes of such goods in any manner other than by way of sale in the State or despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce. The rate of tax payable on such purchase is the rate mentioned in Section 3, 4 or 5, as the case may be, of the said Act.

17. Whatever may be the object with which the bill was introduced in the legislature, we have to go by the language employed in the provision, and so far as the language has been interpreted by the Supreme Court in a particular manner, that interpretation would be binding with regard to the construction of the provision. In the present case, it has been held that Section 7-A is by itself a charging section and that it is not subject to Section 3. In the circumstances, whatever may be the object of the introduction of the provision, as the provision clearly creates a charge, that charge will have to be applied to the transactions arising in the case.

18. The learned counsel for the assessee relied also on a Government Order that was issued by the revenue department on 14th February, 1970 (G. O. Ms. No. 486). In the said G. O., it was stated :

In the circumstances, in the case of single point goods, suppose the tax has been paid at the stage of first sale by the selling dealer, the purchasing dealer at second or subsequent stage of sale will not be liable to tax u/s 7-A.

19. This G. O. reflects what is stated in the objects and reasons. This was the understanding at the time when the Supreme Court had not rendered its decision. It is the decision of the Supreme Court that should govern the construction of the provision and not any G. O. on an incorrect understanding of the provision and, therefore, the interpretation placed by the executive authorities cannot be applied in the present case. We may, however, point out that in view of the clear words employed in the objects and reasons as well as in the G. O. which was simultaneously issued, which show that the intention was not to tax such goods at more than one point, if they had already suffered tax, it would be for the legislature to take notice of the anomaly that has arisen as a result of the language employed in the provision and rectify the provision in a suitable manner by amending the provision accordingly. We may also make it clear that whatever we have stated does not in any manner govern the case of declared goods, which may have to be considered separately.

20. It was brought to our notice that in a representation to the Board, the assessee had already pointed out that though Rs. 5,00,000 had been taken as an estimate for levying tax u/s 7-A, the value of the total purchases during the relevant year came to Rs. 4,27,981.25. It is urged that this figure would have to

be taken into account in case the appeal against the order of the Board fails. This is a matter which has to be considered by the Board on verification of the assessee's figures. The Board is directed to do so.

21. The result is, the appeal fails and is dismissed. However, there will be no order as to costs.