(1991) 07 MAD CK 0053

In the Madras High Court

Case No : T.C. (R) No''s. 1290 and 1291 of 1981

Chandur Forgings APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 02-07-1991

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 3, 3(1)

Citation : (1991) 07 MAD CK 0053

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

Bench : Division Bench

Advocate : P.P.S. Janarthana Raja, for the Appellant; Mrs. Chitra Venkataraman, Additional Government Pleader (Taxes), for the Respondent

Judgement

Dr. A.S. Anand, C.J.—These two tax revision cases have been filed by the same assessee and are directed against the order of the Tamil Nadu Sales Tax Appellate Tribunal, Madras, dated 30th June, 1981, passed in two different proceedings.

2. The assessee in Tax Case (Revision) No. 1290 of 1981 questions the levy of additional sales tax for the assessment year 1977-78 while in Tax Case (Revision) No. 1291 of 1981 it puts in issue the levy of surcharge under the Tamil Nadu Sales Tax (Surcharge) Act, 1971, for the assessment year 1977-78. Both are being disposed of by this common order.

3. So far as Tax Case (Revision) No. 1291 of 1981 is concerned, the assessee was assessed to surcharge under the Tamil Nadu Sales Tax (Surcharge) Act, 1971, by the assessing authority. The surcharge was determined as per the provisions of the Act of 1971 and assessment order was issued. Appeals before the appellate authority as well as before the Tribunal failed.

4. The plea of the assessee that surcharge should have been levied only by treating the transaction as "declared goods" was not accepted by the authorities. From what follows, we find that the view of the authorities does not call for

interference, though for reasons somewhat different.

5. Section 3 of the Tamil Nadu Sales Tax (Surcharge) Act, 1971, reads thus :

"3. Levy of surcharge on sales tax. - (1) Every dealer who is liable to pay tax under the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of 1959) (hereinafter in this section referred to as "the said Act") on the sale or purchase of goods within the limits of area in which this Act is in force shall, on and from the date of the commencement of this Act, pay a surcharge on such tax at the rate of five per cent of such tax :

Provided that in the City of Madras, for the period commencing on the 19th June, 1971, and ending with the 28th June, 1971, the rate of such surcharge shall be ten per cent :

Provided further that if, in respect of declared goods, as defined in clause (h) of section 2 of the said Act -

(i) the tax under the said Act;

(ii) the additional tax under the Tamil Nadu Additional Sales Tax Act, 1970 (Tamil Nadu Act 14 of 1970); and

(iii) the surcharge under this sub-section, payable by such dealer, exceeds four per cent of the sale or purchase price thereof, the rate of surcharge in respect of such goods, shall be reduced to such an extent that the tax, the additional tax and the surcharge together shall not exceed four per cent of the sale or purchase price of such goods."

6. Section 6 of the Tamil Nadu Sales Tax (Surcharge) Act, 1971, reads thus :

"6. Removal of doubts. - For the removal of doubts, it is hereby declared that the surcharge under this Act shall be levied only on the tax payable under the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of 1959) and such surcharge shall be levied in addition to any tax or additional tax payable on the sale or purchase of goods under any law for the time being in force."

7. It could be seen from a bare reading of section 3 that it deals with levy of surcharge on the tax determined under the Tamil Nadu General Sales Tax Act, 1959. Section 3(1) of the Tamil Nadu Sales Tax (Surcharge) Act, 1971, states that every dealer who is liable to pay tax under the Tamil Nadu General Sales Tax Act, 1959, on the sale or purchase of goods within the limits of the area in which the Act is in force shall, on and from the date prescribed under the Act, pay a surcharge on such tax at the rate specified therein. Thus, the levy of surcharge assumes the liability to pay sales tax. The surcharge is to be levied only on the tax payable under the Tamil Nadu General Sales Tax Act, 1959 and that surcharge has to be levied in addition to any tax or additional tax payable on the sale or purchase of goods under any law for the time being in force as per section 6 of the Tamil Nadu Sales Tax (Surcharge) Act, 1971. The plea of the learned counsel for the petitioner that when the assessed transaction which led

to the assessment under the Tamil Nadu General Sales Tax Act was relatable to "declared goods", the benefit of the proviso to section 3(1) of the Tamil Nadu Sales Tax (Surcharge) Act, is available to the petitioner, is misconceived. Since, the assessment which was completed under the Tamil Nadu General Sales Tax Act had not accepted the transactions to be in respect of "declared goods", the court has to look to the quantified tax and the order of assessment under the Tamil Nadu General Sales Tax Act to determine the liability under the Tamil Nadu Sales Tax (Surcharge) Act and has not to go behind the order of assessment under the Tamil Nadu General Sales Tax Act. As the determination of tax under the Tamil Nadu General Sales Tax Act was not in respect of "declared goods", the benefit of the proviso to section 3(1) of the Tamil Nadu Sales Tax (Surcharge) Act cannot be available to the assessee on the plea that the goods, in fact, were "declared goods", but wrongly not treated as such during the assessment proceedings under the Tamil Nadu General Sales Tax Act. It is not permissible for this Court to reopen the order of assessment made under the Tamil Nadu General Sales Tax Act while determining the validity or otherwise of the levy under the Tamil Nadu Sales Tax (Surcharge) Act. The court has to proceed on the basis of the tax as determined under the Tamil Nadu General Sales Tax Act and consider the question of levy of surcharge under the Tamil Nadu Sales Tax (Surcharge) Act. The assessee had failed to establish in the assessment proceeding under the Tamil Nadu General Sales Tax Act that the goods were "declared goods". In fact the assessee sought concessional rate of tax on the basis of form XVII. It is, therefore, not open to the assessee now to seek the benefit of the proviso to section 3(1) of the Tamil Nadu Sales Tax (Surcharge) Act on the plea that the transaction for which it was subjected to tax under the Tamil Nadu General Sales Tax Act was in fact relatable to "declared goods". On the plain phraseology of section 3(1) of the Tamil Nadu Sales Tax (Surcharge) Act read with section 6 of the said Act, the liability to levy surcharge which is governed by that section would be complete where the liability to pay tax under the Tamil Nadu General Sales Tax Act, 1959, has been determined. Surcharge shall be levied at the rate specified in the section on the tax as determined under the Tamil Nadu General Sales Tax Act, 1959. The order of the assessing authority, therefore, was perfectly right and the appellate authority as well as the Tribunal rightly did not interfere with the same. No error can be found in the order of assessment under the Tamil Nadu Sales Tax (Surcharge) Act, 1971 and the levy of surcharge on the specified rate under the said Act is fully justified. The orders of the authorities below do not call for any interference. Tax Case (Revision) No. 1291 of 1981, therefore, fails and is rejected.

8. T.C.(Revision) No. 1290 of 1981 : Coming now to Tax Case (Revision) No. 1290 of 1981, the assessing authority levied additional tax at 0.7 per cent on the taxable turnover u/s 2 of the Tamil Nadu Additional Sales Tax Act, 1970. The pleas raised by the assessee before the Appellate Assistant Commissioner as well as before the Tribunal were similar to the one which have been noticed by us while dealing with Tax Case (Revision) No. 1291 of 1981, viz., that the goods

should be treated to be "declared goods" notwithstanding the fact that in the taxable turnover under the Tamil Nadu General Sales Tax Act, the goods were subjected to tax not as "declared goods" but on the concessional rate on the basis of form XVII.

9. Section 2 of the Tamil Nadu Additional Sales Tax Act, 1970, provides that the tax payable under the Tamil Nadu General Sales Tax Act, 1959, shall, in the case of a dealer whose taxable turnover for a year exceeds the prescribed amount in the section, be increased by an additional tax calculated at the prescribed rate. The rate prescribed in respect of the taxable turnover has been at different rates at different points of time. For the period from 1st April, 1976 to 31st March, 1984, the rate is 0.7 per cent of the taxable turnover where the turnover exceeds ten lakhs of rupees. The assessing authority in the instant case had levied tax at the same rate and, therefore, no fault can be found with the levy of tax by the assessing authority. So far as the other pleas of the assessee are concerned, we have already negatived them while dealing with Tax Case (Revision) No. 1291 of 1981. Hence, the same reasons impel us to reject the pleas raised on behalf of the assessee in this case also and consequently Tax Case (Revision) No. 1290 of 1981 also fails.

10. Thus, from what we have said above, we find that the levy of surcharge under the Tamil Nadu Sales Tax (Surcharge) Act, 1971 and of the additional tax under the Tamil Nadu Additional Sales Tax Act, 1970 by the assessing authority, as upheld by the appellate authority and the Tribunal, does not call for any interference at our bands. Both the tax revision cases, therefore, fail and are dismissed. There will be no order as to costs.

11. Petitions dismissed.