
(2008) 11 MAD CK 0121

In the Madras High Court

Case No : Tax Case (Appeal) No's. 127 and 128 of 2004

Commissioner of Income Tax-I

APPELLANT

Vs

Industries Ltd.

RESPONDENT

Date of Decision : 21-11-2008

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 3B
Tamil Nadu General Sales Tax Rules, 1959 — Rule 6A, 6B

Citation : (2008) 11 MAD CK 0121

Hon'ble Judges : Prabha Sridevan, J;K.K. Sasidharan, J

Bench : Division Bench

Advocate : Pushya Sitaraman, for the Appellant; V.J. Balachander, for S. Sridhar, for the Respondent

Final Decision : Allowed

Judgement

Prabha Sridevan, J.—The question raised in these appeals is whether in the facts and circumstances of the case, the Income Tax Appellate

Tribunal was right in holding that the contingency deposit collected towards tax liability would not form part of the income. The assessment years

relate to 1992-93 and 1993-94 respectively.

2. The assessee is a company engaged in offset printing. For the assessment years 1992-93 and 1993-94, the assessee filed its return. The

assessee had collected an amount of Rs. 3,38,586/- (Assessment Year 1992-93) and Rs. 4,42,448/- (Assessment Year 1993-94) as contingency

deposits for payment of possible tax liability. The assessee's case is that the contingency deposit collected during the year is not a trading

receipt, but only a deposit. In the assessment order, the Assistant Commissioner rejected the assessee's contention holding that whether it is

shown as contingency deposit account or suspense account, it made no difference and the collections formed part of the trading receipt only. On

appeal, the Commissioner of Income Tax (Appeals) held that since the levy of tax is uncertain, this contingency deposit is collected only subject to

refund and therefore, the additions were deleted. Against that, the Department filed an appeal. The Tribunal held that the amount in dispute is a

contingency deposit and there is an associated liability to refund the same. It also held that when the liability to refund exists, it should not be taken

as an income and therefore, it is not a trading receipt. As against that, the Department has filed these appeals.

3. The learned senior standing Counsel appearing for the Revenue submitted that this issue is covered by Commissioner of Income Tax Vs.

Southern Explosives Co., and there can be no dispute regarding the fact that the receipt was a trading receipt. In Sundaram Finance Limited Vs.

The Deputy Commissioner of Income Tax/The Joint Commissioner of Income Tax, Special Range-II, , it was held that the contingency deposit

was assessable. Learned senior standing Counsel relied on Sundaram Finance Limited Vs. The Deputy Commissioner of Income Tax/The Joint

Commissioner of Income Tax, Special Range-II, and (1954) 5 ITR 382 [Tata Iron & Steel Co. Ltd. v. State of Madras].

4. Learned Counsel appearing for the assessee submitted that pursuant to the 42nd Amendment, Section 3-B was introduced in the Tamil Nadu

General Sales Tax Act. Rules 6A and 6B prescribed the method to determine the taxable turnover since the Assessee was advised to collect 5.4%

on 70% of the value of the works contract. Writ petitions were filed. The challenge to the constitutionality of the Act was accepted and the act was

amended. If the tax becomes payable, then it would be paid out of the contingency deposit, if not, the amount would be refunded. This was the

understanding on which it was collected. There was no unjust enrichment. In fact, in the subsequent years, it was refunded. The learned Counsel

also submitted that in the proceedings under the TNGST Act also it was accepted that what was collected by the assessee was in the nature of

contingency deposit. The assessee has also produced proof to show that in the subsequent years, the amounts received were refunded. Learned

Counsel relied on the following decisions:

(1960) 11 S.T.C. 734 [State of Mysore v. Mysore S. & M. Co. Ltd.]

(1977) 40 ITR 497 [Joshi, Sales Tax Officer v. Ajit Mills Ltd.]

(1999) 115 S.T.C. 645 [Karnataka State Financial Corporation v. Deputy Commissioner of Commercial Taxes]

Commissioner of Income Tax, West Bengal-II, Calcutta Vs. Hindustan Housing and Land Development Trust Ltd.,

Commissioner of Income Tax Vs. Madurai Soft Drinks (P.) Ltd.,

Commissioner of Income Tax Vs. Doongaji and Co. Distillery,

Commissioner of Income Tax Vs. South India Sugars Ltd.,

Sundaram Finance Limited Vs. The Deputy Commissioner of Income Tax/The Joint Commissioner of Income Tax, Special Range-II,

(1989) 73 S.T.C. 167 [Dalmia Cement (Bharat) Ltd. v. Dy. C.T.O.]

Commissioner of Income Tax, Coimbatore Vs. Lakshmi Machine Works,

5. In (1960) 11 S.T.C. 734 [State of Mysore v. Mysore S. & M. Co. Ltd.], the question was whether the amounts received would be ""collection

by way of tax"" under the provisions of Mysore Sales tax Act. (1977) 40 ITR 497 [Joshi, Sales Tax Officer v. Ajit Mills Ltd.] was regarding the

vires of Bombay Sales Tax Act too. In (1999) 112 S.T.C. 307 [C.S.T. v. R.M.D.S. Press Pvt. Ltd.], the question was the taxability of ink, which

is used in the job of printing. This decision may also not be applicable here because in that case, the question was whether there is transfer of

property in the ink in execution of job work of printing, whether it is taxable and whether tax had to be paid on the ink so used. Since here the

question whether the contingency deposit is to be treated as income for the relevant year or as trading receipt is to be decided, we are not dealing

with those decisions cited by the learned Counsel for the assessee which turn on the questions whether the amounts received as contingency

deposit would be ""collections by way of tax"" under the relevant State Sales Tax Acts.

6. In Commissioner of Income Tax, West Bengal-II, Calcutta Vs. Hindustan Housing and Land Development Trust Ltd., , the assessee's lands

were acquired. The Land Acquisition Officer awarded compensation. The assessee, dissatisfied with the quantum, preferred an appeal to the

Arbitrator. The compensation was enhanced. This amount was allowed to be

withdrawn on the assessee furnishing security. The enhanced income was assessed to tax as business income. The High court answered the question against the Revenue. The Supreme Court held that this case was one where the right to receive the amount is in dispute and that the High Court was right. Commissioner of Income Tax Vs. Madurai Soft Drinks (P.) Ltd., dealt with the question whether the deposits received by the assessee, a manufacturer of soft drinks, from its customers for the bottles, constituted income. This Court held that the deposits were not meant to be consideration for the sale, but as deposits only and therefore not taxable. In Commissioner of Income Tax Vs. South India Sugars Ltd., the assessee, engaged in the manufacture of sugar, collected excess amount from buyers on sale of levy sugar. The amounts were held in suspense account by virtue of interim orders which permitted the assessee to do so subject to certain conditions. This court held that it could not be characterized as trading receipt. The issue whether the collection of sales tax which is kept in a contingency deposit has been decided in Commissioner of Income Tax Vs. Southern Explosives Co., . This decision is directly on the point since only in this case, the issue as to the collection of sales tax kept in a contingency deposit has been dealt with. Almost all the decisions that are on the point have been considered in the above case and that is why in Sundaram Finance Limited Vs. The Deputy Commissioner of Income Tax/The Joint Commissioner of Income Tax, Special Range-II, , it has been held that this is not longer a debatable issue.

7. In (1989) 73 S.T.C. 167, Dalmia Cement (Bharat) Ltd. v. Dy. C.T.O., it was held thus:

There was no question of the deposits being paid over forthwith to the Government. The money had been collected by way of deposit to meet a contingency where the transactions between the petitioners and the buyers were held to be liable to tax. The petitioners were answerable for the deposits only to the customers.

Therefore, neither withdrawal of enhanced compensation which is kept in a deposit subject to conditions ordered by the court, or deposits kept by soft drinks manufacturer for return of bottles are cases similar to collection of contingency deposit of what might be tax liability. The nature of the

deposit is clearly different. In the soft drink manufacturer's case, it is clearly only a case of deposit and not intended to be anything else. In the case of the owner of the acquired lands, he did not get any right to what he withdrew since he gave security for withdrawal of the amount. Similarly, in the sale of levy sugar at an enhanced price hedged by conditions imposed by Court, cannot also be treated as taxable receipt. Therefore, they stand on a different footing from cases where amounts representing sales tax liability are retained as contingency deposit regardless of whether they are refunded subsequently. The amount was collected towards meeting what the assessee thought at that time, was a statutory liability. It was shown as amounts due from sundry creditors. It was not collected pursuant to any order of court. In *Commissioner of Income Tax Vs. South India Sugars Ltd.*, , the assessee was permitted by orders of Court to collect the excess amount, but this permission was hedged by conditions. Similarly in *Commissioner of Income Tax, West Bengal-II, Calcutta Vs. Hindustan Housing and Land Development Trust Ltd.*, , the amount was deposited in Court and the assessee was permitted to withdraw it on furnishing a bank guarantee. The case on hand is totally different. The orders of the Court referred to by the learned Counsel are orders of stay of assessment order. In the case on hand, it is stay of the penalty. The retention of the amounts by the assessee was not by virtue of orders of court.

8. Since the facts are not in dispute, it is enough if we deal with the question of law alone. The amounts collected by the assessee were amounts which were meant to be utilised for meeting its tax liability. The fact that at that time, the relevant provision was under challenge does not make a difference insofar as the assessee is concerned, since the assessee had collected the amounts only to meet the tax liability. In *Commissioner of Income Tax Vs. Southern Explosives Co.*, , this Court had held that the device adopted by the assessee to label a part of the amounts collected as deposit would not make a difference. It was held as follows:

The purchasers from the assessee did not derive any benefit from the device adopted as the purchasers were made to pay the amounts and the amounts were merely retained by the assessee and in the meanwhile, used by it in the normal course of its business. The receipt which was in its true character a trading receipt, cannot be rendered otherwise by the assessee

labelling the receipt as a deposit.

The true character of the receipt must be judged with reference to the reasons for the collection and the liability for meeting which the collection

was made. When the liability is a statutory liability, which the assessee was required to meet and for meeting which it was by the statutes or

authorities permitted to collect the amount required from its customers, the true character of the collection is a trading receipt. By calling a portion

of the amount as deposit, it cannot be said that the assessee had constituted itself as a trustee, and therefore, the amounts received were not

required to be regarded as part of its trading receipt. Had the assessee been unsuccessful in its claim that his goods were not to be treated as

chemicals there is no doubt that the amounts though collected as deposit, would have been paid over to the State Government as the amounts had

been collected for payment to the State Government as sales tax in the event of the goods being treated as chemicals.

In *Commissioner of Income Tax Vs. South India Sugars Ltd.*, also, the same question was raised and this Court, relying on *Commissioner of*

Income Tax Vs. Southern Explosives Co., , had observed as follows:

...the amounts collected by the assessee were amounts which were meant to be utilised by the assessee for meeting its tax liability. Even if the

assessee had paid over the entire amount received by it as deposit towards sales tax to the State Government, it would still have been open to the

assessee to seek refund if the assessee wished to claim such refund on the ground that the tax had been levied at a higher rate than the rate

permissible. The fact that the assessee had chosen to adopt the device of labelling a part of the amounts collected towards its sales tax liability as

deposit could not make a difference. The amount formed part of the assessee's income.

9. The decision in *Commissioner of Income Tax Vs. Southern Explosives Co.*, is, therefore, just on the point. That is why *Sundaram Finance*

Limited Vs. The Deputy Commissioner of Income Tax/The Joint Commissioner of Income Tax, Special Range-II, was also decided in favour of

the Revenue. It is needless to say, if and when the amounts collected are refunded to the persons from whom the collection had been made, the

assessee can claim deduction in the year in which such refund is effected.

10. For all these reasons, the order of the Income Tax Appellate Tribunal, Madras "B" Bench dated 7.7.2003 passed in I.T.A. Nos.622 and 623/Mds/99 are set aside and the tax case appeals are allowed.