
(1977) 02 MAD CK 0035

In the Madras High Court

Case No : Tax Case No's. 87 to 89 of 1974 (Revision No's. 62 to 64 of 1974)

Deputy Commissioner (C.T.), Coimbatore Division

APPELLANT

Vs

South India Viscose Ltd.

RESPONDENT

Date of Decision : 10-02-1977

Acts Referred:

Central Sales Tax Act, 1956 — Section 2

Citation : (1977) 40 STC 442

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

Bench : Division Bench

Advocate : K.S. Bakthavathsalam, Additional Government Pleader, for the Appellant; C. Natarajan, for the Respondent

Judgement

Sethuraman, J.—These three revision cases arise out of the common order of the Sales Tax Appellate Tribunal dated 31st January, 1972. The Tribunal was disposing under the said order three appeals, two relating to assessments under the Tamil Nadu General Sales Tax Act for the assessment years 1969-70 and 1967-68 respectively and the third relating to assessment under the Central Sales Tax Act for the assessment year 1967-68. We shall first take up for consideration the revision cases relating to the assessments made under the Tamil Nadu General Sales Tax Act. The points in dispute in relation to these two cases relate to : (1) assessment of the turnover of sales of rayon and staple fibre waste, (2) the claim for deduction from the taxable turnover of the rebate on sales of rayon yarn and (3) assessment of miscellaneous sales effected by the assessee. With reference to items (1) and (3), the point in dispute is covered by the decision of the Supreme Court in State of Tamil Nadu v. Burmah Shell Oil Storage and Distributing Company of India Ltd. [1973] 31 S.T.C. 426 In view of the said decision, the assessment of these two items by the sales tax authorities was proper and the Tribunal was not justified in deleting the said items from the assessments for these two years. In view of the fact that the Tribunal held that the said two items are not assessable at all, it had not gone into the determination of the turnover relatable to these items. Now that we have held

that these two items are taxable, the Tribunal will have to determine the turnover relatable to the said two items.

2. As regards the third item, namely, the claim for rebate, the Tribunal has found that rebate has been allowed by the assessee in accordance with regular practice and, as such, that part of the turnover is not assessable to any tax inasmuch as discount is specifically deductible in the light of the definition of "turnover" under the Tamil Nadu General Sales Tax Act, 1959 and the definition of "sale price" under the Central Sales Tax Act, 1956. It has also been pointed out by the Tribunal that the assessee has placed its credit notes, invoices, price lists, etc., for rayon yarn which would show that the rebate formed an integral part of the agreement or contract between the assessee and its buyers. In view of these findings of the Tribunal, we consider that the claim for rebate was properly allowed by the Tribunal. Therefore, this part of the order of the Tribunal is sustained.

3. The result is T.C. Nos. 87 and 88 of 1974 are allowed in part.

4. Coming to the assessment under the Central Sales Tax Act, 1956, the questions that arise for consideration are the same as pointed out earlier. However, with reference to the Central Sales Tax Act, the position in regard to the assessment of turnover relating to rayon and staple fibre waste and miscellaneous sales would be different, because the decision of the Supreme Court in *State of Tamil Nadu v. Burmah Shell Oil Storage and (1) Distributing Company of India Ltd.* [1973] 31 S.T.C. 426 turned on the amended definition of the respective expressions under the Tamil Nadu General Sales Tax Act which had not been incorporated in the Central Sales Tax Act at the material time. In fact, the Supreme Court itself, while confirming the assessability of the turnover with reference to the period subsequent to the amendment, held that the turnover with reference to the earlier period would not be liable to tax. In this view, the decision of the Tribunal that these two items of turnover are not liable to be taxed is correct.

5. As far as the grant of rebate is concerned, the same findings which have been considered by us with reference to the assessments under the Tamil Nadu General Sales Tax Act have been given here. For the same reasons as given by us with regard to the assessments under the Tamil Nadu General Sales Tax Act and having regard to the definition of the term "sale price" as defined in Section 2(h) of the Central Sales Tax Act, 1956, the deduction given by the Tribunal is proper.

6. The result is T.C. No. 89 of 1974 fails and is dismissed.

7. There will be no order as to costs in any of these tax revision cases.

T.C. Nos. 87 and 88 of 1974 partly allowed. T.C. No. 89 of 1974 dismissed.