
(1967) 10 MAD CK 0029

In the Madras High Court

Case No : Tax Case Petition No. 129 of 1966 and Revision No. 82

East India Rubber Works Private Ltd.

APPELLANT

Vs

Government of Madras

RESPONDENT

Date of Decision : 18-10-1967

Acts Referred:

Central Sales Tax Act, 1956 — Section 13, 8, 9A

Citation : (1968) 22 STC 157

Hon'ble Judges : Veeraswami, J; Ramaprasada Rao, J

Bench : Division Bench

Advocate : V. Ramachandran, for the Appellant; The Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Veeraswami, J.—The tax case is directed against an order of the Madras Sales Tax Appellate Tribunal which confirmed the departmental orders demanding payment of Rs. 5,257.72. The amount admittedly represented excess sales tax collections. The assessee sold waterproof cloth and beltings, the turnover of which is exempt under the Madras General Sales Tax Act. He, however, collected Central sales tax on the sales and the demand was in respect of such collection, the department relying on Rule 4-A(iv) of the Central Sales Tax (Madras) Rules, 1957. The Tribunal's view was that the rule is within the competency of the State Government u/s 13(3) of the Central Sales Tax Act. It dealt with the question of vires of the rule on the impression that Section 9A as well as the rule covered collection by a registered dealer of an amount for which there is no liability to pay as tax under the Act.

2. On the view we take of the scope of Section 9A and Rule 4-A, no question of vires of the rule arises. Section 9A reads :

No person who is not a registered dealer shall collect in respect of any sale by him of goods in the course of inter-State trade or commerce any amount by way

of tax under this Act, and no registered dealer shall make any such collection except in accordance with this Act and the rules made thereunder.

3. Let us reproduce also Rule 4-A:

A registered dealer may collect amounts by way of tax under the Act subject to the following conditions :-

(i) He shall not collect any amount by way of tax under the Act at a rate exceeding the rate at which the tax is leviable u/s 8.

(ii) He shall pay in full the amount or amounts collected by him by way of tax to the Government on or before the 30th April of the year succeeding that in which such collection is made or within sixty days of the date of discontinuance of his business whichever is earlier.

(iii) The assessing authority may call for and examine the accounts of the registered dealer for the purpose of satisfying himself that the dealer has paid in full the amount or amounts collected by him by way of tax, as required by condition (ii) above:

Provided that this power shall be exercised before the expiry of five years next succeeding that in which the collections were made.

(iv) If the assessing authority is satisfied that any amount or amounts collected by the dealer by way of tax have not been paid by him to the Government in any year as required by condition (ii) above, the assessing authority shall issue a notice to the dealer specifying therein the total sum so withheld by the dealer and the dealer shall pay such sum at the time and in the manner specified therein.

4. The question is whether the language of Section 9A justifies the interpretation that it covers any amount collected by a registered or unregistered dealer in respect of which there is actually no tax liability under the charging provision of the Act. The expression "any amount by way of tax" should, in our opinion, be understood in the context of the words that follow, "under the Act." So read what: is contemplated, as it appears to us by the section, is collection of an amount in respect of which there is liability to pay as tax under one or the other provision of the Act. To put it differently the section does not cover an amount for which there is no liability under the Act to pay as tax. The language employed by Section 9A is not "any amount by way of tax though not payable as tax under this Act". The section, in our opinion, clearly contemplates only tax which under the provisions of the Act is legally payable and not any amount which is not so payable.

5. That precisely is the interpretation that was placed by this Court in *Tata Iron and Steel Co. Ltd. v. State of Madras* [1954] 5 S.T.C. 382 on Section 8-B(1) of the Madras General Sales Tax Act, 1939, which is word for word identical with Section 9A of the Central Sales Tax Act. *Satyanarayana Rao and Rajagopalan, JJ.*,

in that case opined :

Section Section does not empower even the registered dealer to collect anything other than the. tax lawfully leviable under the Act, despite the use of the expression "by way of tax". That should be the limited scope of Section 8-B(1) even without reference to the rules...

6. We see no reason why, when the language of the two sections is identical, we should not adopt that construction which prevailed with this Court in that case. We do not think that the question of legislative power in respect of the sales tax legislation either in the State or by the Parliament can make any difference to the elucidation of the scope and meaning of the two sections. In *Abdul Quader & Co. v. Sales Tax Officer* [1964] 15 S.T.C. 403 the Supreme Court was concerned with Section 11(2) of the Hyderabad General Sales Tax Act, 1950, which was declared to be in excess of powers of the State Legislature. The section itself made it beyond doubt that it covered an amount by way of tax collected otherwise than in accordance with the provisions of the Act. It was because of this the competency of such a provision was considered and decided. *Indian Steel Rolling Mills Ltd. v. Commercial Tax Officer* [1965] 16 S.T.C. 285 dealt with the very Section 9A of the Central Sales Tax Act. But the learned Judge, if we may say so with respect, assumed that the section covered an amount for which there was no liability to pay tax under the provisions of the Act. *Tata Iron and Steel Co. Ltd. v. State of Madras* [1954] 5 S.T.C. 382 was cited before the learned Judge. But he distinguished it and *Abdul Quader and Co. v. Sales Tax Officer* [1964] 15 S.T.C. 403 on the ground that they interpreted the Act in the light of the powers of the Legislature of the State and therefore could not in terms be made applicable to a Parliamentary enactment. With respect again, we are unable to share this view because interpretation of the scope and effect of a particular section is one thing and legislative competence of that provision is another. If the interpretation of the scope of a particular provision is in one way, the question of vires may not arise.

7. Rule 4-A itself, in our opinion, has no wider scope than Section 9A. In fact Clause (1) of Rule 4-A uses phraseology similar to that in Section 9A and speaks of "any amount by way of tax under the Act". Clause (iv) of the rules deals only with the amount that falls within the scope of Clause (1) and that means only the amounts collected by a registered dealer legally as tax and for which there is liability under the provisions of the Act. It is true that Section 9A says that no registered dealer shall make any collection except in accordance with the Act and the rules made thereunder. The sanction to a registered dealer to collect is u/s 9A itself; but that sanction is subject to the other provisions of the Act and the Rules made thereunder. We find no other provision in the Act which authorises a registered dealer to collect money for which there is no liability under the Act to pay as tax. The sanction is also required to be in accordance with the Rules framed under the Act. But that, in our opinion, pertains only to the procedure in relation to the collection and not to the sanction itself and what can be collected

within the scope of Section 9A. Section 13(3) empowers the State Government to make Rules not inconsistent with the provisions of the Act and perhaps also the preamble thereto. In the present context the purpose of the Act is to be found in Section 9A which is to authorise a registered dealer to collect an amount by way of tax, that is to say, an amount in respect of which there is liability to pay as tax, subject to the condition that such collection should be in accordance with the provisions of the Act and the Rules made thereunder.

8. On that view of the scope of Section 9A and Rule 4-A, it follows that the demand made on the assessee to make over the excess collection cannot be supported. The tax case is allowed with costs. Counsel's fee Rs. 100.