
(1976) 01 MAD CK 0012

In the Madras High Court

Case No : T.C. No's. 145 and 146 of 1971 (Revision No's. 83 and 84 of 1971)

Elgi Equipments (Private) Limited

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 08-01-1976

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 23, 3, 45

Citation : (1977) 40 STC 310

Hon'ble Judges : V. Ramaswami, J;Sethuraman, J

Bench : Division Bench

Advocate : C. Natarajan, for the Appellant; Additional Government Pleader No. I, for the Respondent

Final Decision : Allowed

Judgement

V. Ramaswami, J.—The assesseees are manufacturers and dealers in service station equipments such as air compressors, car washers,

hydraulic lifts, etc. For the assessment year 1964-65, they reported a total and taxable turnover of Rs. 30,73,594.69 and Rs. 9,42,804.38,

respectively. The assessing officer determined the total and taxable turnover at Rs. 32,36,332.19 and Rs. 9,53,424.38 respectively. The assesseees

had used motors and pistons in the manufacture of air compressors and car washers. These motors and pistons were purchased by them issuing

form XVII to the sellers and paying the concessional rate of sales tax. The taxable turnover determined by the assessing authority included the sales

of air compressors and car washers in which they had used these motors and pistons, which they have purchased after issuing form XVII. With

respect to these air compressors and car washers, the assesseees claimed that they were not used with electrical energy and that they were

interchangeable with oil-engine and petrol engines and that, therefore, they would not fall under item 41 of the First Schedule and that, therefore,

that particular turnover would have to be assessed at multi-point tax. But the assessing authority held that these air compressors and car washers

are fitted with motors, which could be used only by electrical energy and, therefore, would fall under item 41 of the First Schedule. Accordingly,

the assessing officer held that this turnover was liable to be taxed at 6 per cent.

2. An appeal preferred to the Appellate Assistant Commissioner by the assesseees was unsuccessful. On a further appeal, however, the Tribunal

held that the air compressors and car washers were not electrical goods and that they could not be brought under entry 41 of the First Schedule

for the purpose of single point levy of tax at 6 per cent and, accordingly, made it liable at the rates prescribed for multi-point levy. This order of the

Tribunal is dated 30th July, 1969.

3. When this matter was pending before the Tribunal, the assesseees submitted the return for the years 1965-66, 1966-67 and 1967-68. But, in

these returns, they did not claim that similar air compressors and car washers in which they have used the motors and pistons which were

purchased by them after issuing form XVII as falling outside item 41. Therefore, the assessing authority subjected them to tax at 6 per cent as

falling under item 41 of the First Schedule.

4. In respect of the year 1968-69 also, though the assesseees did not claim that the turnover relating to the sale of air compressors and car washers

did not fall outside item 41 of the First Schedule, in view of the Tribunal's order dated 30th July, 1969, in respect of the assessment year 1964-65,

the assessing officer held that the turnover relating to the sale of air compressors and car washers would not fall under item 41 of the First Schedule

and, accordingly, liable for multi-point tax. Thereafter, the assessing authority issued a notice u/s 23 of the Tamil Nadu General Sales Tax Act in

respect of the assessment years 1964-65 and 1968-69 proposing to levy penalty on the ground that the assesseees had used the motors and

pistons, which were purchased by them on issuing form XVII declaration, in the manufacture of goods which did not fall under any of the items

mentioned in the First Schedule.

5. The assesseees were contending that Section 23 was not applicable to them

and that it would apply only if they had sold the motors and pistons purchased by them, as spare parts and not as component parts of the goods manufactured by themselves. This contention was not accepted by the assessing officer as also the appellate authority and the Tribunal. They held that the assessee has misused the articles purchased by them on issuing form XVII declaration and that, therefore, they are liable for levy of penalty u/s 23. The ultimate penalty levied by the Tribunal was Rs. 28,400 for 1964-65 and Rs. 45,200 for 1968-69. It is questioned that the above two revision cases have been filed.

6. In order to understand the arguments of the learned counsel for the petitioners, it is necessary to deal with the statutory provisions first. Section

3(1) of the Tamil Nadu General Sales Tax Act levies a multi-point tax on the sale of goods. Section 3(3) provides that in the case of any sale of

goods mentioned in the First Schedule by a dealer to another for use by the latter as component part of any other goods mentioned in that

schedule, which he intends to manufacture inside the State for sale, tax shall be payable by the dealer at the rate of only 2 per cent (which was the

relevant rate at that time) on the turnover relating to such sale. The proviso states that this concession would be available only to a dealer furnishing

to the assessing authority in the prescribed manner, a declaration duly filled in and signed by the dealer to whom the goods are sold, containing the

prescribed particulars in a prescribed form obtained from the prescribed authority. Form XVII, which is the prescribed form, is as follows:

Form XVII

(See Rule 22)

Form of declaration

Name and address of dealer to whom issued.

Registration certificate number of the dealer to whom issued.

Officer issuing the form

To

(Seller)

Certified that the goods specified in the First Schedule and detailed below and purchased from you as per bill/cash memo. stated below supplied under your chalan No.

are for use by me as component part of other goods specified in that schedule and detailed below, which I shall manufacture inside the State for

sale and that I shall not sell the goods purchased under cover of this form as spare parts.

Name and address of the purchasing dealer in full.

Name and address of the seller.

Score out whichever is not applicable.

[Name of the article to be purchased with number in the First Schedule.

Name of the article to be manufactured with number in the First Schedule.]

Particulars of bill/cash memo.

7. Section 45(2)(e) provided for prosecution of a person who, after purchasing any goods in respect of which he has made a declaration under the

proviso to Sub-section (3) of Section 3 fails without reasonable excuse to make use of the goods for the declared purpose. Section 23, which

prescribes the penalty, reads as follows :

23. Levy of penalty in certain cases.-If any person purchasing goods is guilty of an offence under Clause (e) of Sub-section (2) of Section 45, the

assessing authority may, after giving him a reasonable opportunity of being heard, by order in writing impose upon him by way of penalty a sum not

exceeding one and a half times the tax payable on the turnover relating to the sale of such goods at a rate which is equal to the rate prescribed in

the First Schedule less three per cent:

Provided that no prosecution for an offence u/s 45 shall be instituted in respect of the same facts on which a penalty has been imposed under this

section.

8. It is the argument of the learned counsel for the petitioners that form XVII, set out above, contains two declarations or undertakings, one to the

effect that the dealer who issued the declaration and purchased goods would use the goods purchased as component part of another goods

specified in the First Schedule, which he manufactures inside the State for sale and the other undertaking is that he shall not sell the goods

purchased under the cover of that form as spare parts. According to the learned counsel, prosecution might be possible, u/s 45(2) in respect of

contravention of any one of these two conditions or both, but the levy of penalty

u/s 23 could be made only when the goods were sold by him as spare parts and not when they were consumed in the manufacture of goods not specified in the First Schedule.

9. We are of the opinion that the learned counsel is well-founded in this contention. It may be seen from the contents of the form of declaration that the undertaking given by the purchaser consists clearly of two parts. In the first part, he undertakes to use the goods purchased as component parts of other goods specified in the First Schedule, which he is manufacturing inside the State for sale and the second part deals with an undertaking not to sell the goods purchased under the cover of the form as spare parts. The contravention of this declaration would arise in the following cases: First, though the purchaser uses the goods purchased as component part of any other goods manufactured by him, for sale in the State, the goods manufactured are not specified in the First Schedule. Secondly, contrary to the declaration, he does not use it as a component part of any other goods manufactured by him, but sells the goods as such.

10. Section 23, in our opinion, deals with only the second class of contravention, where the goods were not used as component parts of any other goods manufactured by the purchaser, but are sold as such goods. This is clear from the fact that the penalty is related to the turnover relating to the sale of such goods and not to either the cost of purchase of the goods or its use as a component part in any other goods not mentioned in the First Schedule, manufactured by the assessee. There can be no turnover relating to the sale of such goods if the goods had formed a part of another manufactured item. The use of the words ""turnover"" and ""sale of such goods"" in Section 23 read with the words ""if any person purchasing goods is guilty of an offence under Clause (e) of Sub-section (2) of Section 45"" clearly show that the section contemplates only a contravention of the declaration in form XVII by selling the goods purchased under the cover of the form as spare parts and not a case where it was used as a component part of some other goods, which is not specified in the First Schedule.

11. The learned Government Pleader raises two contentions against this construction. Firstly, he referred to the words ""sale of such goods"" as not necessarily sale of the goods purchased in the form in which it was purchased, but even in a case where it forms part of a component of another

article, it amounted to a sale of such goods. This argument is not acceptable, because when it forms a component part of another article, the turnover could relate only to the item to which these goods form part and not these goods themselves. Therefore, the use of the expression "turnover" clearly shows that it should be with reference to the identical goods which were purchased and sold and not as component part of some other articles.

12. Alternatively, the learned Government Pleader argued that the words "turnover relating to the sale of such goods" in Section 23 have a reference to the turnover of the sale made by the third party. In other words, it related to the purchase turnover of the assessee. We are unable to accept this contention also. If really, the words "turnover relating to the sale of such goods" related to the turnover of the seller of the goods, then it could not be applied to a case where the purchaser, after having given the declaration, sells the same goods as spare parts, because, in such a case, penalty would be levied with reference to the sales turnover of the person, who gave the declaration and contravened the same and not with reference to the turnover of his seller. We are of the view that the turnover referred to in the section, with reference to which the penalty is levied, is the turnover of the offender and not the turnover of his seller. We are, therefore, of the view that u/s 23, a penalty could be levied only for a contravention of not using the article as component part of any other item manufactured by the purchaser, but selling as a spare part to a third party.

13. In the result, both the tax revision cases are allowed and the order levying penalty is set aside. The petitioners will be entitled to costs.

Counsel's fee Rs. 150 in each.