
(1997) 08 MAD CK 0123

In the Madras High Court

Case No : Tax Case Revision Petition No's. 696, 784 and 785 of 1985 (Revision No's. 297, 346 and 347 of 1985)

Eveready Industries India Limited

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 29-08-1997

Acts Referred:

Central Sales Tax Act, 1956 — Section 2

Citation : (1997) 08 MAD CK 0123

Hon'ble Judges : R. Jayasimha Babu, J;B. Akbar Basha Khadiri, J

Bench : Division Bench

Advocate : T. Suresh, for M/s. King and Partridge, for the Appellant; T. Mathi, Government Advocate, for the Respondent

Judgement

R. Jayasimha Babu, J.—The petitioner is common in all these cases. The assessment years in question are 1977-78, 1978-79 and 1979-80. The assessee is aggrieved by the finding of the Tribunal that the arc carbon supplied by it had been brought to tax as cinematographic equipment. The assessee seeks to contend that arc carbon is an independent commercial commodity and is a consumable and, therefore, cannot be classified as cinematographic equipment for the purpose of taxation. This very point was considered by this Court in T.C. No. 1598 of 1981 decided on April 4, 1991 (Reported as Union Carbide India Limited v. State of Tamil Nadu in [1992] 86 STC 36. in which case the assessee herein was the petitioner. The court rejected the contentions put forth by the assessee after holding that it is not permissible to restrict the ambit and scope of the term "accessory" used in item 6 in the First Schedule to the Tamil Nadu General Sales Tax Act, only to parts which are of a permanent nature.

2. The court held that the decision of the apex Court in Annapurna Carbon Industries Co. v. State of Andhra Pradesh [1976] 37 STC 378 rendered in the context of a similar entry in the corresponding Act in Andhra Pradesh squarely applied to the assessee's case as well.

3. The next question raised by the assessee is regarding the taxability of the transaction involving the despatch of calendars got printed by the assessee at Prasad Process (Private) Limited, to its dealers from whom admittedly the assessee collected the costs incurred by it in getting the calendar printed. The Tribunal and the authorities below have held that those despatches had occasioned inter-State sales effected by the assessee to its dealers.

4. Learned counsel for the assessee contended that the assessee was only acting as an intermediary as between its agent and printer, and that the assessee had only been reimbursed by its agent of the cost incurred on getting the calendars printed and, therefore, there was no sale at all by the assessee to its dealers. Learned counsel relied on the decision of this Court in *Jenson & Nicholson (India) Ltd. v. State of Tamil Nadu* [1994] 93 STC 110, wherein, it was found by the court that the assessee therein who had admittedly supplied calendars to its customers free of cost had been wrongly subjected to tax on those calendars by treating the charges for printing, packing and freight as the consideration for the sale. The court observed thus :

"We fail to see how collection of charges for printing, packing, freight, etc., which are nothing but expenses for sale promotion could be considered as exigible to sales tax and how those expenses could fall within the definition of the expression "sale", within the meaning of section 2(h) of the Central Sales Tax Act, 1956".

In this case, the order placed by the assessee on Prasad Process (Private) Limited shows that the assessee had placed an order for supply of 8,00,000 Eveready dealer calendars-single sheeter-3 designs, the description of the work done is as under :

"To printing and supplying Eveready dealer calendar 1980-single sheeter-3 designs. Copies of the above calendars main sheet printed in four colours, size in 14" x 19 1/2" 4 sheet date pad printed in 2 colours, size in 14" X 5 1/2 14" metal rimming on top with silk thread hanger."

Rate for these supplies was Rs. 520 per 1,000. The printer has collected Tamil Nadu general sales tax at 4 per cent from the assessee as also surcharge at 5 per cent on sales tax. The total value of the goods supplied being Rs. 4,16,000. The aggregate of the amount of the value of the goods, the tax and surcharge is Rs. 4,33,472. The goods were delivered to the assessee at Madras.

5. It is clear from this document, that it was the assessee which placed the order in bulk for 8,00,000 calendars in different designs, paid for the goods and, thereafter, supplied limited quantities to its dealers who had agreed to take the numbers specified by them, in accordance with the form of indent that had been issued by the assessee to its dealers. The calendars were ordered by the assessee. The assessee paid for the same, took delivery in its own name. The assessee had thus acquired the ownership of the calendars and only thereafter, supplied limited quantities to its dealers at different places and collected from

them the cost of the calendars. The supply of the calendars to the dealers of the assessee was thus for a consideration and was not free of cost as a measure of sales promotion unlike the case of *Jenson & Nicholson (India) Ltd. v. State of Tamil Nadu* [1994] 93 STC 110 (Mad.) cited by the counsel for the assessee.

6. The assessee cannot be regarded as having acted as agent of its dealers when it placed a bulk order in different designs in the printer, The bill also does not indicate that the printer was required to print the names of the dealers on these calendars. Any such printing must have been done only subsequently, if at all. It is also possible that it is the dealers themselves who got the names printed after obtaining supplies from the assessee.

7. These facts necessarily lead to the conclusion that the assessee had ordered a supply of calendars in bulk, paid for the same and as the owner of these goods had sold these goods to its dealers, to the extent indented for by the dealers, the consideration for that sale being the same amount as the cost per copy that the assessee had incurred in acquiring these calendars. The Tribunal in the circumstances rightly held that the calendars were sold by the assessee to its dealers for a consideration which was taxable.

8. The last point urged for the assessee is that the Tribunal ought to have allowed concessional rate of tax even in the absence of "C" forms. There is no provision in the statute which entitled a dealer to claim a concessional rate of tax in the absence of "C" form. No such form had been produced in respect of that part of the turnover on which the rate of 10 per cent was levied. There is no error in the order of the Tribunal rejecting the assessee's claim for levy of concessional rate of tax even in the absence of "C" forms.

9. In the result, we do not find substance in these revision petitions. All the revision petitions are dismissed without any order as to costs.

10. Petitions dismissed.