

(1977) 06 MAD CK 0008

In the Madras High Court

Case No : Tax Case No's. and 468 of 1974 (Revision No. 224 of 1974)

G. Balakrishnan and Brothers P. Ltd.

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 23-06-1977

Acts Referred:

Factories Act, 1948 — Section 46

Tamil Nadu General Sales Tax Act, 1959 — Section 17, 55

Citation : (1978) 41 STC 450

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

Bench : Division Bench

Advocate : C.S. Chandrasekara Sastri, C. Venkataraman and C. Natarajan, for the Appellant; Additional Government Pleader, for the Respondent

Judgement

Sethuraman, J.—The Sales Tax Appellate Tribunal, Coimbatore, disposed of an appeal on 9th March, 1972, filed by the assessee. The

turnover in dispute before the Tribunal came to Rs. 99,904.70 consisting of two items, namely, (1) Rs. 93,639.45 representing canteen sales and

Rs. 6,265.25 representing the sale of scraps. The Tribunal proceeded on the basis that these two items of turnover are not liable to be taxed in

view of a decision of this court reported in Deputy Commissioner of Commercial Taxes v. Thirumagal Mills Limited [1967] 20 S.T.C. 287. The

Tribunal further proceeded on the basis that this decision had been affirmed by the Supreme Court. The Tribunal noticed that, as far as the canteen

sales are concerned, it was an amenity provided by the company for its workers and staff as enjoined u/s 46 of the Factories Act. In the view that

it took on the basis of the decision of this court which was assumed by it to have been affirmed by the Supreme Court, the Tribunal did not go into

the contentions of the assessee, but merely excluded the said items from the taxable turnover.

2. On 19th June, 1974, the State Representative before the Sales Tax Appellate Tribunal filed a petition u/s 55 of the Tamil Nadu General Sales

Tax Act, 1959, pointing out that the Supreme Court in the Case of State of Tamil Nadu v. Burmah Shell Oil Storage and Distributing Company of

India Limited [1973] 31 S.T.C. 426 held that all transactions which are incidental or ancillary to the business of the assessee are liable to be taxed

under the Tamil Nadu General Sales Tax Act, 1959, as amended by Act 15 of 1964. It was, therefore, pointed out that the order of the Tribunal

relating to the turnover covered by canteen sales and sales of scraps amounting to Rs. 97,276.70 required revision and it was accordingly prayed

that the relevant error may be rectified. Before the Tribunal the assessee filed a counter to the rectification petition. In the course of the said

counter, the assessee pointed out that the Tribunal had failed to consider G.O.P. No. 2238, Revenue, dated 1st September, 1964, governing

canteen sales and that it was an error of law. The assessee had other objections to the rectification petition. All these objections were considered

by the Tribunal in its further order dated 28th August, 1974. The Tribunal held that in view of the decision of the Supreme Court in State of Tamil

Nadu v. Burmah Shell Co. Ltd. [1973] 31 S.T.C. 426, the sales of scraps had attracted liability to tax as such sales were incidental and ancillary

to the trade of the assessee. As regards the canteen sales, the Tribunal observed:

However the turnover of canteen sales would be exempt from assessment only if the assessee had subsidised 25 per cent of the total expenses

incurred in running the canteen as per G. O. P. No. 2238, Revenue, dated 1st September, 1964. In view of the above decision of the Supreme

Court the deletion of the assessment on the second turnover by the Tribunal is an error apparent on the face of the records. In their counter the

respondents seek to claim exemption from assessment on the second turnover on the basis of the above Government Order. This contention has

not been raised by the respondents at any stage of the proceedings. This contention raised for the first time before the Tribunal cannot be given any

consideration in view of the decision in Easun Engineering Co. Ltd. v. Sales Tax Appellate Tribunal. [1972] 29 S.T.C. 378.

3. The result was that the Tribunal brought to tax the sum of Rs. 97,276.70 which, according to the revenue, was liable to be taxed in the light of the decision of the Supreme Court in *State of Tamil Nadu v. Burmah Shell Co. Ltd.* [1973] 31 S.T.C. 426.

4. Against this order of the Tribunal the assessee has filed the present revision petition. The point taken on behalf of the assessee is that the Tribunal, while rectifying one error has created another. According to the assessee, the Tribunal should have gone into the question as to whether the canteen sales were not exempt in view of the G.O. and that the Tribunal was not justified in proceeding as if that G.O. not having been cited at the time of the original appeal could not be referred to in the course of the rectification proceedings. The learned Additional Government Pleader in his vehement arguments submitted that the Tribunal had only rectified the errors that existed in its order and that it was not necessary for it to examine whether there were any other errors in the light of other possible contentions that could have been taken by the assessee, but which were not taken. The learned Additional Government Pleader submitted that the order of the Tribunal in so far as it rectified the errors in its original order was proper and did not merit any interference in the hands of this court.

5. As pointed out already, there were two items of turnover which were the subject-matter of consideration by the Tribunal. One was regarding the canteen sales and the other was regarding the sale of scrap. As regards the sale of scrap the amount involved in the appeal before the Tribunal was Rs. 6,265.25. The Tribunal had confirmed the assessment to the extent of Rs. 2,628. Therefore, it is only the balance of Rs. 3,637.25 that was the subject of the rectification petition filed by the State. With reference to the scrap sales, it cannot be disputed that there was an error in the order of the Tribunal in so far as the said sales had been deleted from the taxable turnover on a misapprehension that the Supreme Court had affirmed the , decision of this court in the Case of *Thirumagal Mills Ltd.* [1967] 20 S.T.C. 287 The Supreme Court had actually not approved this court's decision in relation to the transactions after the Amendment Act of 1964. It would, therefore, follow that there was an apparent error as regards the sum of Rs. 3,637.25 and the assessee's objection to the rectification is not well-founded.

6. We now come to the turnover relating to canteen sales. With reference to these sales the submission on behalf of the assessee is that originally a total exemption was claimed on the basis that the assessee was not liable to be assessed at all with reference to these transactions and, also on the basis that the assessee having maintained the canteen u/s 46 of the Factories Act, the turnover was not liable to be taxed. Though it is not clear whether the G.O., which is to be presently considered, was actually cited before the Tribunal, yet, according to the assessee's learned counsel, the Tribunal, by rectifying an error on the basis of the decision in *State of Tamil Nadu v. Burmah Shell Co. Ltd.* [1973] 31 S.T.C. 426, could not immediately confirm the assessment with reference to the said turnover as the further point as to exemption under the provisions of the Act would have to be considered. The learned Additional Government Pleader emphasised that the jurisdiction of the Tribunal was available only to rectify the particular error and not to go into any other matters.

7. As already pointed out, the Tribunal, in support of its decision, has referred to a decision of this court in *Easun Engineering Co. Ltd. v. Sales Tax Appellate Tribunal* [1972] 29 S.T.C. 378. That was a decision of a learned single Judge of this court. In that case, an assessee had appealed to the Tribunal and the appeal has been disposed of by an order dated 30th January, 1965. Subsequently, in *Khosla and Co. (P.) Ltd. v. Deputy Commissioner of Commercial Taxes* [1966] 17 S.T.C. 473, the Supreme Court rendered a decision on 18th January, 1966. On the basis of this decision, the assessee filed an application in 1967 stating that a turnover of Rs. 8,33,024.21 had to be excluded from the taxable turnover, since, according to the decision in the *Khosla's Case* [1966] 17 S.T.C. 473, they should be deemed to be sales which occasioned the import. The Tribunal having refused to allow the petition filed in 1967, the matter came before this court in writ proceedings at the instance of the assessee. In the course of the decision, the learned Judge has pointed out that there was no duty cast on the Tribunal to decide whether any part of the turnover related to sales in the course of import and that the Tribunal was not also called upon to do so by any argument of the learned counsel. It was, therefore, pointed out that there was no error which had crept into the record and that, in any event, such an error could not be said to be an

apparent error.

8. We do not consider that this decision has any scope for application to the facts of this case. The dispute with reference to the said sum was very much before the Tribunal. Therefore, this is not a case where the assessee, in a rectification proceeding, was trying to take up objection to an assessment with reference to which no objection had been taken at any earlier stage. The observations of this court in the said decision have to be understood in the light of the particular facts. The learned Additional Government Pleader drew our attention to an earlier decision of this court in *C.B.B. Thandava Rao v. State of Madras* [1964] 15 S.T.C. 22. It was pointed out for the State that the error u/s 55 must be manifest and self-evident on the face of the record and that, in the present case, the error pointed out by the assessee cannot be said to be a manifest error. The contention based on this decision appears to proceed on the wrong understanding of the argument of the learned counsel for the assessee. The learned counsel for the assessee does not say that the error committed by the Tribunal in so far as it relates to the canteen sales without reference to the G.O. was a manifest error liable to be rectified u/s 55 of the Act. He submitted that even though u/s 55 there was jurisdiction to reopen an order already passed and to find out whether there was any rectifiable error, still, if the rectification proceedings are taken up, it was necessary for the particular authority to go into the question as to whether in the course of rectifying that error there was anything further to be done. According to him, the jurisdiction does not end with merely removing the error but involves the consideration of all arguments that would have been considered even in the first instance. In this case, the assessee could not have filed a review petition, as the decision of the Tribunal was not adverse to him on this point. This is not also a case where the assessee is seeking to utilise the opportunity provided by the rectification proceedings to get redress of other errors which he could have raised independently on his own. The question here is confined to the point whether consequent on the rectification there is scope for any possible error which he wants to be taken note of.

9. We consider that though the Sales Tax Appellate Tribunal had jurisdiction to rectify an error in its order based on a misapprehension of the

decision of the Supreme Court, still when it came to the question of finding out what is to be done thereafter, the Tribunal has power to examine all

aspects relevant to the turnover which was the subject of the rectification proceedings. The G.O. issued u/s 17 of the Act relied on by the assessee

exempted transactions that come within its scope. If the G.O. exempts certain transactions coming within its scope, then any assessment contrary

to the G.O. would be introducing an error into the assessment even though the introduction of such an error was the consequence of the

rectification of another error. There is no warrant in the Act authorising introduction of an error in the course of proceedings for rectification of

another error. The fetters on the jurisdiction to rectify so as to confine the jurisdiction only to patent errors which did not involve any doubt or

dispute will not apply to the consequential issues that flow from the application for rectification being accepted. The same result follows even in a

case of suo motu rectification. The acceptance of the contrary view would be to allow one party to get away with an inequitable or unjust or even

an illegal order. It would be an abdication of jurisdiction by the rectifying authority if it has to leave the matter without considering the unjust

consequences flowing from its own order. The erroneous assumption made by the Tribunal as regards the decision of the Supreme Court cannot

preclude the assessee from taking all points which the assessee would have argued, had not this wrong assumption been made by the Tribunal. We

are thus fully satisfied that the assessee is well within his rights in asking for an opportunity to show that the turnover was exempt under the G.O.

10. We are not making any observation on the question as to whether the assessee is eligible for the exemption based on the G. O. This is a

question which has to be considered by the Tribunal. The revision is accordingly allowed with reference to the canteen sales and the appeal is

restored to the file of the Tribunal with a direction to dispose of the appeal afresh in accordance with law.

11. The revision petition is allowed in part. There will be no order as to costs.