(1976) 12 MAD CK 0007

In the Madras High Court

Case No : Tax Case No''s. 122, 123 and 124 of 1973 (Revision No''s. 102, 103 and 104 of 1973)

Gordon Woodroffe and Co. P. Ltd. APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 16-12-1976

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 15, 8
Tamil Nadu General Sales Tax Act, 1959 — Section 3, 4, 4A

Citation : (1977) 40 STC 130

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

Bench : Division Bench

Advocate : K.J. Chandran, for Subbaraya Iyer and Padmanabhan, for the Appellant; K.S. Bakthavathsalam, Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ismail, J.—All these three revision petitions are by the same petitioner and they relate to three different assessment years, namely, 1966-67

to 1968-69. The assessments were under the Central Sales Tax Act, 1956. The petitioner claimed exemption from tax under the Central Sales

Tax Act in respect of the turnover in question. With regard to the facts, the Tribunal states as follows:

The appellants purchased raw hides and skins within the State, tanned them and sold them inter-State. No doubt, in respect of the locally

purchased raw hides and skins, they have suffered tax at the purchase point as per item 7(a) of the Second Schedule. It is not the case of the

appellants that in respect of the inter-State sales in question they are with reference to the raw hides and skins. The inter-State sales in question are only with reference to the sales of tanned hides and skins. It is not the case of the appellants that the tanned hides and skins sold inter-State had

suffered tax as tanned hides and skins within the State. What the appellants claim is that because locally purchased raw hides and skins had

suffered purchase tax under item 7(a) of the Second Schedule, proportionate exemption has to be given in respect of inter-State sales of tanned

hides and skins.

2. For the purpose of understanding this claim of the petitioner and the rejection thereof by the Tribunal, it is necessary to refer to certain statutory

provisions.

3. Section 14 of the Central Sales Tax Act, 1956, enumerates certain items as goods which are of special importance in inter-State trade or

commerce. Item (iii) of Section 14 is as follows:

(iii) hides and skins, whether in a raw or dressed state.

4. Section 15 of the Central Sales Tax Act provides :

Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be

subject to the following restrictions and conditions, namely :-

(a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed three per cent (as it stood on

the relevant date) of the sale or purchase price thereof and such tax shall not be levied at more than one stage;

(b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in

the course of inter-State trade or commerce and tax has been paid under this Act in respect of the sale of such goods in the course of Inter-State

trade or commerce, the tax levied under such law shall be reimbursed to the person making such sale in the course of inter-State trade or

commerce in such manner and subject to such conditions as may be provided in any law in force in that State.

5. In order to give effect to these provisions of the Central Sales Tax Act, Section 4 of the Tamil Nadu General Sales Tax Act, 1959, has been

enacted as follows :

Notwithstanding anything contained in Section 3, the tax under this Act shall be payable by a dealer on the sale or purchase inside the State of

declared goods at the rate and only at the point specified against each in the Second Schedule on the turnover in such goods in each year,

whatever be the quantum of turnover in that year.

6. Section 4-A of the Tamil Nadu Act gives effect to Section 15(b) of the Central Sales Tax Act. Pursuant to the provisions contained in Section 4

of the Tamil Nadu Act, the Second Schedule to the Tamil Nadu Act deals with hides and skins as items 7(a) and 7(b) and they are as follows :

7. The Governor of Tamil Nadu in exercise of his powers under Sub-section (5) of Section 8 of the Central Sales Tax Act, 1956, has issued the

following notification;

Declared goods-Inter-State sales-Exemption (Madras)

(G.O. No. 3602, Revenue, 28th December, 1963.)

III No. 56 of 1964. In exercise of the powers conferred by Sub-section (5) of Section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of

1956), the Governor of Madras hereby directs that in respect of all declared goods sold in the course of inter-State trade or commerce, no tax

under the said Act shall be payable by any dealer, where tax has been levied and collected in respect of the sale or purchase of such declared

goods u/s 4 of the Madras General Sales Tax Act, 1959 (Madras Act 1 of 1959), subject to the following conditions, namely :-

(i) the burden of proving that the tax u/s 4 of the Madras General Sales Tax Act, 1959 (Madras Act 1 of 1959), has been levied and collected in

respect of any such declared goods shall lie on the dealer; and

(ii) the dealer shall not claim refund under Clause (b) of Section 15 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), of the tax levied

and collected u/s 4 of the Madras General Sales Tax Act, 1959, from the dealer or such tax has not been refunded to him.

8. It is based on these provisions, the petitioner claimed before the taxing authorities and the Tribunal that the petitioner was not liable to pay tax

under the Central Sales Tax Act, 1956, in respect of the inter-State sales of tanned hides and skins effected by it, because it had paid tax u/s 4 of

the Tamil Nadu General Sales Tax Act, 1959, in respect of the raw hides and skins which it locally purchased. We are of the opinion that this claim of the petitioner was not tenable and was rightly rejected by the Tribunal. It is clear that the notification issued by the Governor of Tamil

Nadu contemplates the identity of the goods with reference to which tax has been levied under the State Act and tax is payable under the Central

Sales Tax Act. It is not in dispute that commercially raw hides and skins are different from tanned hides and skins. Even though both of them have

been grouped together as item (iii) of Section 14 of the Central Sales Tax Act, they have been put in two separate entries as 7(a) and 7(b) in the

Second Schedule of the Tamil Nadu General Sales Tax Act, 1959 and the rate of tax as well as the point at which the tax is leviable have been

shown separately. Therefore, simply because the petitioner purchased raw hides and skins locally and with reference to such purchase it paid tax

under item 7(a) of the Second Schedule of the State Act and subsequently tanned them, it does not follow that the tanned hides and skins which

the petitioner sold in the course of inter-State trade were the same commodities with reference to which tax had already been paid. The notification

issued by the Governor makes it clear that the goods with reference to which the levy of tax under the State Act and under the Central Act are

contemplated must be identical. Once it is conceded that the raw hides and skins are commercially different from tanned hides and skins, it

automatically follows that the tanned hides and skins which alone are the subject-matter of inter-State sales are not liable to any tax under item 7(b)

of the Second Schedule under the State Act, since the raw hides and skins which were tanned had suffered tax under item 7(a) of the Second

Schedule to the State Act and, therefore, will not come within the scope of the notification. Since, admittedly, the petitioner has not paid any tax

with reference thereto under the State Act, it will not be entitled to the exemption provided for in the notification of the Governor. Under these

circumstances, the petitions fail and they are dismissed. There will be no order as to costs.

