

(1998) 02 MAD CK 0042

In the Madras High Court

Case No : T.C. (R) No. 432 of 1995 (Revision No. 121 of 1995)

Greaves Chitram Limited

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 04-02-1998

Acts Referred:

Central Sales Tax Act, 1956 — Section 9(2A)

Tamil Nadu General Sales Tax Act, 1959 — Section 12(4), 12(5)

Citation : (2003) 133 STC 364

Hon'ble Judges : P. Thangavel, J; M.S. Janarthnam, J

Bench : Division Bench

Advocate : N. Inbarajan, for the Appellant; V. Ravi Raja Pandian, Special Government Pleader, for the Respondent

Final Decision : Partly Allowed

Judgement

Janarthnam, J.—This revision, at the instance of the assessee, is directed against the order dated August 12, 1994 of the Tamil Nadu Sales

Tax Appellate Tribunal (Additional Bench), Madras-104 (for short ""Tribunal"" and made in T.A. No. 531 of 1992 relating to the assessment year

1986-87 under the Central Sales Tax Act, 1956 (Act 74 of 1956) (for short ""CSTA"").

2. The assessee--Tvl. Greaves Chitram Limited, having their place of business at 38, Main Road, Royapuram, Madras-13 is coming within the

jurisdiction of the Commercial Tax Officer, Royapuram assessment circle.

3. The assessee-dealers reported a total and taxable turnover of Rs. 3,97,97,938.93 and Rs. 2,97,35,987.39 respectively as per the return in

form-I for the assessment year 1986-87 under CSTA. Accounts were called for and checked by this assessing officer, before ever the order of

assessment was made. In the process of checking accounts, the assessing officer found that the exemption claimed in respect of transport charges

of Rs. 2,28,836 was not in order and hence disallowed the exemption so claimed. He further found that the levy of rate of tax at 10 per cent

should be made instead of at four per cent on a turnover of Rs. 17,288 inasmuch as the assesses-dealers had not produced the necessary and

requisite "C" forms for availing the concessional rate of taxation. The assessing officer also levied a penalty of Rs. 34,325, representing 150 per

cent of the tax due under the salient provisions adumbrated u/s 9(2A) of CSTA read with Section 12(5)(iii) of the Tamil Nadu General Sales Tax

Act, 1959 (for short, "TNGSTA").

4. The aggrieved assesses-dealers preferred an appeal in A.P.-C.S.T. No. 62/88 before the Appellate Assistant Commissioner (CT)-I, Madras

(for short "AAC"). The said AAC sustained the order of the assessing officer in disallowing the exemption on a turnover of Rs. 2,28,836 and also

the levy of tax made upon a turnover of Rs. 17,288 at 10 per cent, in the absence of production of "C" forms on the said turnover. He however,

reduced the penalty imposed upon the assesses-dealers by the assessing officer to 50 per cent from 150 per cent, i.e., to say from Rs. 34,325 to

Rs. 13,730.

5. The assesses-dealers further filed an appeal before the Tribunal, as stated above. The Tribunal, after taking into consideration the relevant

materials available in the file and of course, after hearing arguments of learned counsel appearing on either side, dismissed the appeal, giving rise to

the present action--T.C.(R) No. 432 of 1995.

6. Challenge in this action, as revealed from the grounds taken is relatable only to includibility of the transport charges in a sum of Rs. 2,28,836 in

the sale price, making the said charges liable to tax at the appropriate rate and the penalty as reduced by AAC quantified in a sum of Rs. 13,730

and no challenge is made as respects the imposition of tax at 10 per cent on a turnover of Rs. 17,288.

7. From the pith and substance of the submissions of Mr. N, Inbarajan, learned counsel appearing for the assessee and Mr. R. Ravi Raja Pandian,

learned Special Government Pleader, representing the Revenue, the one and only question that crops up for consideration is as to whether the

order of the Tribunal, on the facts and in the circumstances of the case, sustaining the order of AAC pertaining to the includibility of the transport

charges in a sum of Rs. 2,28,836 in the taxable turnover exigible to tax at the appropriate rate and reduction of penalty to 50 per cent in a

quantified sum of Rs. 13,730 for filing incomplete and incorrect return is sustainable in law ?

8. During the course of arguments, the relevant file containing the invoices and purchase orders had been produced before us for our perusal and

consideration. We have sifted certain purchase orders and also invoices. In the process of such sifting, we are able to discern from the purchase

orders, that the assesses-dealers agreed to effect delivery of the goods at the place of the buyer. What was further agreed by the assesses-dealers

was that the freight charges will be pre-paid by them. From certain invoices we have perused, we are also able to discern that from the price of the

goods, a discount at three per cent had been deducted and that apart, excise duty paid at ten per cent and Central sales tax paid at four per cent

against "C" form had been included, besides adding the transport charges in the sale price of the goods supplied.

9. Axiomatic a proposition of law it is, that purchase orders and sale invoices cannot by themselves determine the terms and conditions of the

contract entered into between the parties--seller, and buyer. The contents of such documents, however, may give some sort of a clue as to the

nature of the transaction, in the absence of an agreement on contract entered into between the parties. If the contents of such documents did not

reveal any sort of a clue as to the nature of the transaction entered into between the parties, it is well-nigh not possible, in the absence of evidence

aliunde, to determine the nature and character of the transaction entered into between the parties.

10. In the case on hand, no doubt true it is, that no written contract or agreement between the parties is available, but nonetheless as had already

been stated, from the purchase orders and the invoices, a lot of clue is there to determine the nature and character of the transaction entered into

between the parties. For the sake of emphasis, we may reiterate and state that such documents reveal, in unmistakable terms, that the delivery of

the goods was to be effected by the assesses-dealers to the buyer at his place and that apart, the transport charges had been paid by the assesses-

dealers besides the same being included in the sale invoice. The pre-payment of the freight charges and its inclusion in the sale, invoices of course

may not by themselves, indicate, in the eventualities and circumstances in the absence of a contract between the parties, that the pre-paid transport

charges were to be includible in the sale price for the determination of the turnover exigible to tax at the appropriate rate. The absence of a written

contract is of no consequence in the case on hand, when especially there are materials pointing out that the delivery was to be effected by the

assessee-dealers to the buyer at his place.

11. The includibility or otherwise of freight and insurance charges in the sale price exigible to tax had been posing constant problems in the various

High Courts, in the sense of divergent views among them getting reflected causing agonising situations at the assessee's place at different parts of

the country and such agonising situations came to be relieved by the apex Court of this country in giving a solution to the conflicting views, in the

case of *Hindustan Sugar Mills Ltd. v. State of Rajasthan* [1979] 43 STC 13.

12. The apex Court after taking into consideration the various hues of views reflected in catena of decisions laid down the ratio or rule, in a

scintillating fashion, as to the includibility or otherwise of the freight and insurance charges exigible to tax in a sale transaction between the parties--

sellers and buyers at different ends under CSTA.

(a) In the process of giving an answer to the tangle so posed, the apex Court projected two questions :

1. Who, under the terms of the contract was liable to pay the freight, the assessee or the purchaser ? and

2. Was the contract one for delivery at destination railway station or was it a contract in which delivery to the purchaser would be complete as

soon as the goods are put on rail at the place of despatch ?

(b) After posing the questions as above, the Supreme Court said, in the process of discussion, that if the contract was one for delivery at the

destination railway station, risk continues to be that of the seller-dealer and consequently, the freight and insurance charges paid are includible in

the sale price exigible to tax. If the contract is one, in which delivery to the purchaser would be complete, as soon as the goods are put on rail at

the place of despatch, the risk is that of the purchaser and the freight and

insurance charges incurred are not includible in the sale price exigible to tax. That is not the invariable rule in all eventualities and circumstances.

(c) In case of existence of control orders fixing the obligation on the part of the selling dealer to effect delivery of goods at the place of the buyer,

e.g., Cement Control Order, 1967, the liability to pay the freight and insurance charges have to be necessarily on the shoulders of the selling dealer

and the fact that he paid the freight and insurance charges and later on was getting them reimbursed from the purchaser or the fact that the goods

were despatched by him "freight to pay", thereby deducting the freight charges from the sale price, making the purchaser to pay the freight charges

would not make any difference at all, the reason being that the freight paid by the purchaser at the destination station must be construed to have

been paid for and on behalf of the seller, on whom the liability to pay such charges had been mulcted or fastened by the Control Order. What is

further said was that it is impermissible for the parties--seller and buyers--to contract out of the provisions of the Control Orders and if they do so,

stipulations or provisions in the Control Order would have the effect of overriding the contract between the parties, e.g., in the case of the sale of

cement, a controlled commodity, the price of which is fixed per metric tonne by the Control Order at the place of destination railway station, the

liability of freight and insurance charges is fixed on the part of the selling dealer. It is impermissible to enter into contract to make delivery complete

by putting the goods, viz., cement in the loading railway station, thereby fastening risk upon the buyer in rather a bid to exclude the freight and

insurance charges from the sale price exigible to tax.

13. In the light of the principles, as evolved by the apex Court of this country, let us enter into the arena of discussion to give a legal fitment to the

factual matrix of the instant case. As already adverted to, the assesses-dealers agreed to effect delivery at the place of the buyer and that apart,

they have also paid the transport charges, besides including the same in the invoice. In such circumstances, it is too late in the day for the assesses-

dealers to say that the freight charges incurred by them in effecting delivery to the buyer at his place is not includible in the sale price exigible to tax

at the appropriate rate. In this view of the matter, the includibility of the transport charges in the sale price cannot at all be found fault with.

14. What is left out of consideration is the penalty as imposed by the assessing officer and thereafter reduced by AAC in a quantified sum, as stated above. Section 12(5)(iii) of TNGST Act empowers the assessing authority to levy a penalty in a sum not less than 50 per cent and not more than 150 per cent of the difference in tax payable on the turnover disclosed in the return and that determined by the assessing authority, in case the return submitted by the assessee is found to be incorrect and incomplete. It is not as if the assesses-dealers did not disclose the entirety of the transactions in their accounts. The admitted fact is that the assesses-dealers disclosed the entire transactions in the records. But what was done was that a portion of the turnover was claimed to be exempted from tax. In such state of affairs, it cannot at all be stated that the assesses-dealers had refracted or violated the salient provisions adumbrated under Clause (iii) of Sub-section (4) of Section 12, attracting penalty imposable under Clause (iii) of Sub-section (5) of Section 12 of TNGST Act read with Section 9(2A) of CSTA. We are, therefore, of the view that the order of the Tribunal to retaining the penalty to the extent of 50 per cent minimum prescribed, as had been done by AAC cannot at all be allowed to stand and the same deserves to be dismissed and the same is, accordingly set aside.

15. In fine this revision is allowed in part, in the sense of setting aside the, reduced penalty, as had been imposed upon the assesses-dealers by Appellate Assistant Commissioner (CT)-I, Madras-108. The revision in other respects shall, however, stand dismissed. There shall, however, be no order as to costs, on the facts and in the circumstances of the case.