

(1997) 12 MAD CK 0024

In the Madras High Court

Case No : Tax Case (Revision) No. 1 of 1994

Honest Corporation

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 16-12-1997

Acts Referred:

Central Sales Tax Act, 1956 — Section 6(1A), 8, 8(2A)

Tamil Nadu General Sales Tax Act, 1959 — Section 17, 17(1), 17(3)

Citation : (1997) 12 MAD CK 0024

Hon'ble Judges : M.S. Janarthanam, J; K.P. Sivasubramaniam, J

Bench : Division Bench

Advocate : A. Chandrasekaran, for the Appellant; K. Elango, Government Advocate (Taxes), for the Respondent

Judgement

Janarthanam, J.—This revision, at the instance of the assessee, Tvl. Honest Corporation, 126, Chitrakara Street, Madurai, is directed

against the order dated September 30, 1992 of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Madurai-20 (for short, "the

Tribunal") and made in M.T.A. No. 784 of 1991 relatable to the assessment year 1988-89 under the Central Sales Tax Act, 1956 (for short "the

CST Act").

2. The assessee is a dealer in vermicelli at Madurai. It appears he effected inter-State sales of vermicelli during the assessment year 1988-89. He

however, did not file any declaration in support of such sales.

3. Invoking the power u/s 17(1)(a) of the Tamil Nadu General Sales Tax Act, 1959 (for short, "the TNGST Act") the Government of Tamil Nadu

issued a notification in G.O.P. No. 303 dated March 26, 1981 [No. II(1)/CTRE/164(c)/81] granting exemption in respect of the tax payable by

any dealer on the sales of appalam, vermicelli and bakery products without a brand name or with a brand name not registered under the Trade and

Merchandise Marks Act, 1958 (Central Act 43 of 1958-for short ""the TMM Act""), giving, prospective effect from April 1, 1981.

4. (a) In G.O.P. No. 804 dated May 30, 1988 [No. II(1)/CTRE/98/88], an amendment had been brought into the aforesaid exemption, by the insertion of a proviso to the following effect :

Provided that in respect of bakery products, appalams, vadams and vathals, the total turnover of the dealer for a year does not exceed rupees two lakhs.

(b) The same had been published in the Tamil Nadu Government Gazette dated June 15, 1988.

5. In G.O.P. No. 1316 dated October 7, 1988 [No. II(1)/CTRE/144(f)/88] in supersession of the earlier notification dated May 30, 1988 [No.

II(1)/CTRE /98/88 - G.O.P. No. 804], the following amendment has been brought in giving retrospective effect on and from April 1, 1988, which reads as follows :

(v) an exemption in respect of the tax payable by any dealer under the said Act on the sale of appalams, vadams, vathals, vermicelli and bakery

products without a brand name or with a brand name not registered under the Trade and Merchandise Marks Act, 1958 (Central Act 43 of 1958)

whose total turnover for a year does not exceed rupees three lakhs.

6. The assessee-dealer was exempted from payment of tax on inter-State sales effected by him till up to March 31, 1988. As per G.O.P. No.

1316 dated October 7, 1988, exemption granted in the sale of vermicelli was restricted only up to Rs. 3,00,000 under the TNGST Act. The said

notification was, however, given retrospective effect from April 1, 1988. Consequently, the assessee-dealer was subjected to tax under the

CST Act at the appropriate rate in respect of inter-State sales of vermicelli he had effected during, the assessment year 1988-89, depending upon

the production or non-production of the ""C"" forms not only by the assessing officer, but also by the AAC and the Tribunal.

7. The aggrieved assessee-dealer resorted to the present action - T.C. (R) No. 1 of 1994.

8. (a) According to Mr. A. Chandrasekaran, learned counsel appearing for the

assessee, the assessee-dealer is entitled to exemption in respect of inter-State sale transactions between April 1, 1988 and October 6, 1988 u/s 8(2-A) of the CST Act and the assessee-dealer, if at all, he would

say, is liable to pay tax on inter-State sale transactions which took place between October 7, 1988 and March 31, 1989 at appropriate rate

depending upon the production or non-production of the "C" forms.

(b) The said learned counsel would further elucidate his views as projected above. He would state that section 8(2-A) opens with a non obstante

clause which gives it an overriding effect over the provisions contained in section 6(1-A) and over sub-section (1) as well as clause (b) of sub-

section (2) of section 8. The sub-section seeks to provide exemption to a dealer with respect to his turnover in so far as his turnover or any part

thereof relates to (a) sale of any goods, the sale, or, as the case may be, the purchase of which is under the sales tax law of the appropriate State,

exempt from tax generally or (b) where his turnover or any part thereof relates to the sale of any goods, the sale or the purchase of which is subject

to tax generally at a rate which is lower than four per cent. In a case covered by (a), the Central sales tax will be "nil" while in a case falling under

clause (b), the Central sales tax shall be chargeable at the same lower rate at which the State sales tax is chargeable.

(c) The explanation appended to said sub-section seeks to define the words "exempt from tax generally". The explanation is couched in the

negative terms. It says that for the purpose of the said sub-section, a sale or purchase of any goods shall not be deemed to be exempt from tax

generally under the State sales tax law if (i) under the State law the sale or purchase of such goods is exempt only in specified circumstances or (ii)

if under the State law the sale or purchase of such is exempt only under specified conditions or (iii) if under the State law the tax is levied on the

sale or purchase of such goods at specified stages or (iv) whereunder the State law the tax is levied otherwise than with reference to the turnover

of the goods.

(d) He would also state that G.O.P. No. 303 dated March 26, 1981 grants a total exemption, whereas G.O.P. No. 1316 dated October 7, 1988

grants only conditional exemption, in the sense of the limit having been prescribed to Rs. 3,00,000. Once there is a conditional exemption, he

would fairly concede and state the sale or purchase of any goods shall not be deemed to be exempt from tax generally under the State sales tax

law according to the explanation appended to the said sub-section (2-A).

(e) He would further submit that the said G.O.P. No. 1316 had been issued on October 7, 1988, giving retrospective effect from April 1, 1988.

According to him, the retrospectivity given in the said G.O.P. from April 1, 1988 is not permissible, on the face of the salient provisions

adumbrated u/s 17(3) of the TNGST Act and if at all the same can be given effect to prospectively, i.e., to say on and from October 7, 1988.

9. Mr. K. Elango, learned Government Advocate representing the Revenue, would however, repel the submissions as above made by the learned

counsel appearing for the assessee.

10. We shall now enter into the arena of discussion as to the tenability or otherwise of the rival submissions of either counsel appearing or

representing for the respective parties.

11. Section 17 of the TNGST Act deals with the power of Government to notify exemptions and reductions of tax. Sub-sections (1) and (3)

thereof, relevant for our present purpose, read as under :

(1) The Government may, by notification, issued whether prospectively or retrospectively, make an exemption, or reduction in rate, in respect of

any tax payable under this Act.....

(2)

(3) The Government may, by notification, cancel or vary any notification issued under sub-section (1).

12. If we carefully peruse, the language in which sub-section (1) of section 17 is couched, it will be crystal clear that as and when the Government

may, by notification, make an exemption or reduction in rate in respect of any tax payable under the Act, the same may be done whether

prospectively or retrospectively. But, if we take into account the language in which sub-section (3) of section 17 is couched, the phraseology

whether prospectively or retrospectively is not there and what is stated therein is the Government is empowered by way of a notification to cancel

or vary any notification issued under sub-section (1). That means that notification issued under the said sub-section can be only prospectively and

not retrospectively.

13. This aspect of the matter came up for consideration before this Court in the case of *G. Packirisamy & Co. v. State of Tamil Nadu* [1995] 99

STC 21. Paragraph 15 at page 26 relevant for our present purpose reads as under :

By the enactment of sub-section (1) of section 17 of the TNGST Act the Legislature has given power to the Government to make subordinate

legislation, by way of issuance of a notification to grant exemption or reduction of tax, either prospectively or retrospectively. No doubt true it is

that under sub-section (3) thereof, the Government inheres power to cancel or vary any notification issued under sub-section (1) by the issuance of

another notification. But the language of the said sub-section, if subjected to careful scrutiny, will reveal such a power is not taking in its fold the

power to cancel or vary any notification with retrospective effect and to put it otherwise, such a power may be exercised only prospectively.

This decision is applicable, on all fours to the facts of the instant case.

14. On the face of such a decision, it goes without saying that G.O. P. No. 1316 dated October 7, 1988 can be given prospective operation on

and from October 7, 1988 and not retrospective operation with effect from April 1, 1988. Once this position is reached, the inter-State sale

transactions effected by the assessee-dealer between April 1, 1988 and October 6, 1988 must have to be necessarily exempted from tax and the

inter-State sale transactions effected by him between October 7, 1988 and March 31, 1989 were to be subjected to tax under the CST Act at the

appropriate rate, depending upon the production or non-production of the "C" forms.

15. In this view of the matter, the orders of tax authorities inclusive of the Tribunal that the inter-State sale transactions effected by the assessee-

dealer are liable to be taxed at the appropriate rate depending upon the production or non-production of the "C" forms are not sustainable in law

and therefore, they are accordingly set aside.

16. The assessee-dealer would, of course, claim that the inter-State sale transactions effected by him between April 1, 1988 and October 6, 1988

and between October 7, 1988 and March 31, 1989 would amount to in quantified sums of money. He had also calculated the quantified sums. It

is not possible for us at this stage to state whether the quantification of the amounts would really reflect the reality of the situation.

17. In that view of the matter, what we feel as the better course to be adopted, is to remit the matter to the assessing officer for the determination

of the turnover of inter-State sales between the two periods as stated above and accordingly grant exemption to the turnover of inter-State sales

between the period April, 1, 1988 to October 6, 1988 and tax the turnover between October 7, 1988 and March 31, 1989 at the appropriate

rate depending upon the production or non-production of "C" forms.

18. The tax case (revision) is thus disposed of. No costs.

19. Petition disposed of accordingly.