(2015) 06 MAD CK 0252

In the Madras High Court

Case No : Tax Case (Revision) No. 45 of 2015

India Cements Ltd. APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 03-06-2015

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 17(1), 3, 4, 5, 7A

Citation : (2015) 06 MAD CK 0252

Hon'ble Judges : R. Sudhakar, J;K.B.K. Vasuki, J

Bench : Division Bench

Advocate : N. Inbarajan, for the Appellant

Judgement

R. Sudhakar, J.—This Tax Case (Revision) is filed by the assessee as against the order of the Sales Tax Appellate Tribunal.

2. It is submitted by the learned counsel appearing for the petitioner/assessee that the issue involved in this revision with regard to levy of purchase tax under Section 7A of the Tamil Nadu General Sales Tax Act is covered by a decision of this Court in respect of the very same assessee in the case of India Cements Limited 827, Anna Salai Chennai 600002 Vs. The State of Tamil Nadu, (2012) 51 VST 286 , wherein this Court, while answering the issue against the assessee and in favour the Revenue, held as follows:

"A reading of these decisions of this court and in the context of the decision reported in [1993] 88 STC 98 (SC) (Hotel Balaji v. State of Andhra Pradesh) and The State of Tamil Nadu Vs. M.K. Kandaswami and Others, AIR 1975 SC 1871 : (1975) 4 SCC 745 : (1976) 1 SCR 38 : (1975) 36 STC 191 : (1975) 7 UJ 521 , it is thus clear that the scheme of purchase tax levy under section 7A of the Act does not cover cases of sale or purchase of goods totally exempted from tax at all points under section 8 or section 17(1). However, where the exemption is a qualified one, be it goods related or dealer related, purchase or sale of goods subjected to any of the contingencies enumerated under section 7A, would certainly attract the charge under section 7A of the Act. Going by these decisions, we have no hesitation in rejecting the plea of the assessee that the notification granting exemption to sale by Tamil Nadu Electricity Board cannot be considered as a circumstance to apply to the assessee to exclude the charge under section 7A of the Act. Quite apart from that section 7A itself underwent an amendment with effect from January 1, 1987 which reads as follows:

"7A. Levy of purchase tax. - (1) Every dealer who in the course of his business purchases from a registered dealer or from any other person, any goods (the sale or purchase of which is liable to tax under this Act) in circumstances in which no tax is payable under sections 3, 4 or 5, as the case may be, (not being a circumstance in which goods liable to tax under sub-section (2) of section 3 or section 4, were purchased at a point other than the taxable point specified in the First or the Second Schedule) and either,-

(a) consumes or uses such goods in the manufacture of other goods for sale or otherwise; or

(b) disposes of such goods in any manner other than by way of sale in the State; or

(c) dispatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-state trade or commerce,

shall pay tax on the turnover relating to the purchase aforesaid at the rate mentioned in section 3, 4 or 5 as the case may be, whatever be the quantum of such turnover in a year:

Provided that a dealer (other than a casual trader or agent of a non-resident dealer) purchasing goods (the sale of which is liable to tax under sub-section (1) of section (3)) shall not be liable to pay tax under this sub-section, if his total turnover for a year is less than one lakh of rupees".

The amendment brought to section 7A of the Act with effect from January 1, 1987 by notification and the phrase "not being a circumstance in which goods liable to tax under sub-section (2) of section 3 or section 4, were purchased at a point other than the taxable point specified in the First or the Second Schedule) and either" was considered by this court in the decision reported in Ruchi Soya Industries Limited Vs. Commercial Tax Officer and Others, (2008) 12 VST 546 , and similar contention now taken was rejected. Thus, this Court applying the decision of the apex court, rejected the plea of the assessee and confirmed the assessment made under section 7A of the Act.

In the light of the provisions under section 3 as well as section 7A of the Act, before the amendment in the 1986, i.e., upto December 31, 1986, and there afterwards from January 1, 1986 onwards, we have no hesitation in holding that the assessments were correctly made and the Tribunal''s order is in accordance with the principle of law laid down by the apex court in the decision reported in The State of Tamil Nadu Vs. M.K. Kandaswami and Others, AIR 1975 SC 1871 :

(1975) 4 SCC 745 : (1976) 1 SCR 38 : (1975) 36 STC 191 : (1975) 7 UJ 521 and in the decision reported in Hotel Balaji and others, Vs. State of Andhra Pradesh and others, etc. etc., AIR 1993 SC 1048 : AIR 1992 SC 1048 : (1992) 6 JT 182 : (1992) 2 SCALE 924 : (1993) 4 SCC 536 Supp : (1992) 2 SCR 182 Supp : (1993) 88 STC 98 "

3. Recording the above-said submission of the learned counsel appearing for the petitioner and following the above-said decision of this Court, the question of law is answered against the assessee. Accordingly, this Tax Case (Revision) stands dismissed. No costs.