
(1995) 01 MAD CK 0118
In the Madras High Court
Case No : T.C. (Revision) No. 272 of 1987

J. Abdur Rahim and Company	Vs	APPELLANT
State of Tamil Nadu		RESPONDENT

Date of Decision : 24-01-1995

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 2

Citation : (1995) 01 MAD CK 0118

Hon'ble Judges : T. Jayarama Chouta, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : N. Inbarajan, for the Appellant; A.K. Gopinath, Government Advocate (Taxes), for the Respondent

Judgement

Thanikkachalam, J.—The assessee is the petitioner. The assessee is the dealer in dressed skins. The assessee claimed exemption on purchases in wattle extract amounting to Rs. 1,12,799.93, effected through the All India Skin and Hide Tanners and Merchants Association. The assessee contended that the assessee is entitled to exemption claimed in respect of purchase through the All India Skin and Hide Tanners and Merchants Association (hereinafter referred to as "the Association") in view of the certificate dated March 3, 1984, issued by the association. The assessing officer held that the abovesaid association is not an agent of the assessee and the assessee is the last purchaser and the consumer. Therefore, a sum of Rs. 1,12,799.93 is assessable at 2 per cent. Aggrieved with the same, the assessee filed an appeal before the Appellate Assistant Commissioner. According to the Appellate Assistant Commissioner, since the purchases could not be linked with any earlier written contract, the assessing officer was correct in levying taxes on Rs. 1,12,799.93, especially, according to the Appellate Assistant Commissioner when there is no evidence to show that the said association has acted only as an agent. Accordingly, the Appellate Assistant Commissioner confirmed the order passed by the assessing officer. On further appeal, the Appellate Tribunal, following the decision in the case of National Chamber of Commerce, Madras v. State of Madras 1970 25 STC 185 and an

earlier order of the Tribunal in the case of M. A. Ismail & Co. v. State (T.A. No. 591/84 dated January 27, 1986), confirmed the order passed by the Appellate Assistant Commissioner. It is against that order the assessee is in revision before this Court.

2. Learned counsel for the assessee submitted that the association in distributing the wattle extract to its members does not effect the sales so that the assessee can be stated to have purchased the goods from the association. Learned counsel further submitted that neither section 2(n) nor 2(g) would make the distribution by the association as sale. Learned counsel further submitted that there is mutuality in distributing the wattle extract and, therefore, there is no sale in this transaction. The association merely acts as an agent by distributing the imported wattle extract among the members without any profit but collected service charges only. The costs of consignment and other allied expenses are borne out by the members. Therefore, the purchases of wattle extract through the association should be treated as purchases in the course of import.

3. On the other hand, the learned Government Advocate (Taxes) submits that the association is a registered dealer under the Act and is also assessed. The dealers have purchased the imported wattle extract from the association and are the last purchasers, within the State. There is no evidence on record to show that the abovesaid association has acted as an agent. The purchase of wattle extract should not also be linked with any earlier contract or written indent. The transaction in the import and distribution of wattle extract involved transfer of property. As a dealer the association effected sales in accordance with its business.

4. We have heard the rival submissions. The fact remains that the assessee claims exemption on purchase of wattle extract effected through the association. According to the assessee, the association which is distributing the wattle extract to its members does not effect sales so that the assessee can be considered to have purchased the same from the association.

5. Learned counsel relied upon the decision reported in The Joint Commercial Tax Officer, Harbour Division, II-Madras Vs. The Young Men's Indian Association (Regd.), Madras and Others, . The facts arising in this case are that the Young Men's Indian Association, a registered society, provided a mess together with a canteen serving the needs of the members. Within the limit and restrictions of the rules of the association a member could bring a guest but it was the member who had to pay the charges for any articles consumed by the guest. No profit was made by the association in providing the amenities to the members. On these facts, the court has held that :

"In spite of the definition of "sale" in section 2(n) read with Explanation I of the Madras General Sales Tax Act, 1959, if there is no transfer of property from one to another there is no sale which would be exigible to tax under the Act. If a members" club even though a distinct legal entity acts only as an agent for its

members in the matter of the supply of various preparations and articles to them no sale would be involved as the element of transfer would be completely absent."

Hence, no tax could be levied under the Tamil Nadu General Sales Tax Act, 1959.

6. Another decision relied upon by the learned counsel for the assessee was that reported in the case of *The State of Tamil Nadu Vs. The Madras Advocates' Co-Operative Society Limited*, According to the facts arising in this case -

"The assessee, the Madras Advocates' Co-operative Society, a society registered under the Madras Co-operative Societies Act, 1932, and running a restaurant for the benefit of its members on a non-profit basis was assessed to sales tax on the ground that it was effecting sales of food and refreshments. The claim of the assessee that it was not taxable under the Tamil Nadu General Sales Tax Act, 1959, as it was neither a dealer nor doing any business and its transactions did not amount to sales was negated by the assessing authority and the Appellate Assistant Commissioner. The Tribunal found that the assessee was supplying tiffin and refreshments only to its bona fide members and that it was not effecting any sales and it was not a dealer under the Act. On a revision : Held, that there was no sale of any refreshments by the assessee and, therefore, the assessee was not liable to sales tax."

7. Reliance was also placed upon another decision of this Court reported in *State of Tamil Nadu v. Madras Motor Parts Dealers' Association* 1978 42 STC 243, the facts arising in this case are as follows :

"The members of the Madras Motor Parts Dealers' Association desirous of importing certain motor parts, which were in demand, paid the necessary amounts to the association after specifying the nature of the parts required by them and the extent of the quantity required. Under the agreement the association should act as the agents of the members, get the goods imported on behalf of the members and then disburse them to the members for sale. The licence to import the parts had been given only to the State Trading Corporation, but the letter of authority given to the corporation authorised the corporation to permit the association to import on behalf of the corporation. The licence provided that the goods for the import of which the licence had been granted should be the property of the licensee at the time of import and thereafter up to the time of clearance through customs. The licence also contained a condition that the goods imported should be supplied only to actual users who could be specified by the corporation. It was contended for the association that there was really no sale by the association to its members, that the sale was really by the foreign sellers to the members of the association and that such a sale was in the course of import and, therefore, not liable to be taxed under the Tamil Nadu General Sales Tax Act, 1959. On these facts it was held :

(i) that the import sale was not in favour of the association or its members, but was in favour of the corporation, the association acting as the agent of the

corporation; and

(ii) that what had been done by the association in making available to its members the goods that it had imported under the letter of authority was merely an act of distribution or allotment to its members without any intention or agreement to sell. There was therefore no sale by the association to its members and no tax could be imposed on that transaction. Any sale would have to be by the members of the association to actual users and such sales could be taxed at the hands of the members."

8. Reliance was also placed upon the decision reported in *Bagalkot Cement Co. Limited v. State of Mysore* [1970] 25 STC 520 wherein the Mysore High Court has held as follows :

"A commission agent, who is not a mere broker but has the custody of the goods and has the authority to transfer the property and title in the goods, would be a dealer within the definition of that word in the Central Sales Tax Act, 1956. There is no reference in that definition to the ownership of the goods and therefore the goods may be owned by the dealer or somebody else."

9. According to the facts arising in the present case, the association is a registered dealer under the Act and is also assessed as an assessee. The association purchased the imported wattle extracts. The assessee purchased the imported wattle extract from the association and the assessee is the last purchaser within the State and the wattle extract was consumed by the assessee. There is no evidence on record to show that the association acted as an agent of the assessee in importing the wattle extract. There is also no earlier contract or written indent for this purpose. According to the assessee the association has only acted as an agent for the assessee and imported the tanning materials. But no documentary evidence was produced to support this plea. The Explanation to the definition of a "dealer" is subject to their being a sale. There is reference in the Explanation to distribution, as distribution involves a transfer.

10. The decisions in *The Joint Commercial Tax Officer, Harbour Division, II-Madras Vs. The Young Men's Indian Association (Regd.), Madras and Others*, , and *The State of Tamil Nadu Vs. The Madras Advocates' Co-Operative Society Limited*, stated supra are the decisions concerned with supply of refreshments and other articles to members by the club acting only as an agent of members. Therefore, those decisions would not be applicable to the facts of this case. The only decision which would be helpful in deciding the issue arising in the present case is that reported in *The State of Tamil Nadu Vs. The Madras Motor Parts Dealers' Association*, . According to the facts arising in that case import sale was not in favour of the association or to its members. But was in favour of the corporation, the association acting as an agent of the corporation. What had been done by the association in making available to its members, the goods that it had imported under the letter of authority was merely an act of distribution or allotment to its members without any intention to sell and the licence also

contained the condition that the goods imported should be supplied only to the actual users who could be specified by the corporation. But according to the facts arising in the present case, there is no evidence on record to show that the association acted as an agent of the assessee. The import licence is standing in the name of the association. The assessee is the last purchaser and the consumer. In view of these facts, in the absence of any documentary evidence to show that the said association acted as an agent of the assess, it is not possible to accept the contention put forth by the assessee that the distribution of wattle extract by the association to the assessee is not a sale. The import has been made by the association on its own account and then distributed the wattle extract to its members who are the consumers and the last purchasers and, therefore, the value of purchase of wattle extract effected through the association cannot be exempted.

11. In the result, the revision is dismissed. But there will be no order as to costs.

12. Petition dismissed.