(1964) 09 MAD CK 0020

In the Madras High Court

Case No : T.C. No. 21 of 1963 (Appeal No. 4)

K.P. Sitaram and Co. APPELLANT

Vs

The State of Madras RESPONDENT

Date of Decision : 30-09-1964

Acts Referred:

Citation : (1965) 16 STC 436

Hon'ble Judges : Ramamurti, J;Ramakrishnan, J

Bench : Division Bench

Advocate : P. Sharfuddin, for the Appellant; G. Ramanujam, for the Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Ramamurti, J.—The appellants K. Sitaram and Company are dealers in oil and oil cakes carrying on business in Kandappa Chetty Street,

Madras. This tax case appeal arises out of the assessment proceedings for the year 1957-58. The dispute in this appeal relates to a sum of Rs.

1,85,348-02, the contention of the assessees being that the said sum represents the turnover of the transactions in which they acted as buying

agents and they are not therefore liable to sales tax thereon. The contention of the department, is that in respect of this sum, the assessees

purchased goods for themselves and later on sold them. In the assessment proceedings they claimed exemption in respect of a sum of Rs. 45,562-

86 as transactions representing selling agency transactions and a sum of Rs. 1,85,348-02 as representing buying agency transactions. The Deputy

Commercial Tax Officer rejected the claim of the assessees in respect of both the items aforesaid but on appeal, the Commercial Tax Officer allowed the claim of the assessees and granted exemption in respect of Rs. 1,69,875-45 as representing buying agency transactions. The

assessees'' claim in respect of selling agency transactions was rejected by the Commercial Tax Officer. Thereupon the assessees had preferred a

revision petition to the Deputy Commissioner of Commercial Taxes and while that revision was pending, the Board of Revenue, exercising its

powers of revision, upheld the claim of the assessees in regard to selling agency transactions but held that the assessees were not entitled to

exemption in respect of the buying agency transactions. The present appeal is preferred against the order of the Board of Revenue regarding the

buying agency transactions.

2. Mr. Sharfuddin, learned Counsel for the appellants raised an objection that the Board of Revenue had no power to exercise the powers of

revision in view of the fact that the assessees had preferred a revision to the Deputy Commissioner of Commercial Taxes and that revision has not

been disposed of but was pending when the Board of Revenue took up the matter. As we are upholding the claim of the assessees on the merits,

we think it unnecessary to deal with this objection.

3. We shall now take up the assessees'' claim on merits in relation to this turnover of Rs. 1,85,348-02.

4. The Board of Revenue in dealing with this matter has divided this turnover for purposes of convenience into three categories; (1) in which the.

assessees had purchased the goods from the Kerala manufacturer and passed on the goods to one single purchaser; (2) purchases made by the

assessees from the Kerala dealer and delivered them to more than one local purchaser; (3) part of the purchases diverted to certain buyers shown

as buying agency transactions.

5. The hearing of this appeal was adjourned for the department to produce the relevant vouchers, pattials, and receipts as well as relevant

correspondence which passed between the assessees and the buyers to whom the goods were ultimately sold and delivered. On a perusal of the

correspondence we are satisfied that in all these transactions coming under the three categories, the assessees had been acting only as buying

agents and they never purchased any portion of these goods in their own right with a view to sell them later on in the market. The Board of

Revenue has taken one pattern of the transactions covered by the first category for discussion and from the documents it had come to the

conclusion that the assessees did not act as buying agents but they themselves purchased the goods from the Kerala dealer and later on, in their

turn, sold the goods to their customers. Taking that instance as a specimen we shall now consider the effect of the documents connected with the

transaction. The documents show that on 4th April, 1957, the assessees had contacted the buyer Rathinasabapathy Chettiar for the purchases of

350 tins of coconut oil and on the same day, the assessees had placed an order with the Kerala dealer for the sale and despatch of 350 tins of

coconut oil. On 4th, there is a telegram sent by the Kerala dealer as follows: ""Received offering 350 coconut oil 3/1/6/26/25 naya paise wire

tomorrow morning"". On 4th April, 1957, the assessees sent a telegram to the Kerala dealer as follows: ""Received accepted accordingly 350 26/25

despatch immediately."" Then on 5th April, 1957, the Kerala dealer sent a telegram to the assessees as follows: ""Received confirmed 350 26/25.

On 5th the assessees wrote a letter of confirmation to the buyer Rathinasabapathy Chettiar to the effect that in pursuance of the conversation which

the assessees had with Rathinasabapathy, they had placed an order with the Kerala dealer for the despatch of 350 tins of coconut oil. We may

hereunder extract the relevant portion of the letter dated 5th April, 1957:

With reference to the conversation you had with us over the phone, we confirm having bought for you and for your account and risk 350 tins of

coconut oil from Messrs Sivakumar Oil Mills, Meyyanad, for ready despatch at Rs. 26-25 per ton of 37 lbs. net F.O.R. Quilon. We have given

instructions to despatch the consignment and on receipt of the same shall clear and deliver to you....

(Sd.) K.P. Sitharam & Company.

I confirm the above transaction.

(Sd.) P.S. Rathinasabapathy Chettiar,

12--4--1957.

6. This letter also bears an endorsement to the effect that the transaction was confirmed by the purchaser on 12th April, 1957. From the foregoing

correspondence, it will be clear that right from the beginning, the assessees have been acting only as buying agents, contacting the purchaser first

and later on placing an order with the Kerala dealer, and then again ordering the goods on behalf of the ultimate purchaser and effecting delivery in

pursuance of that order. The learned Government Pleader did not attack the genuineness of the letters and the telegrams. It may be mentioned that

even the Board of Revenue did not entertain any doubt or suspicion about the genuineness of this chain of correspondence. If so much is clear, we

are of the view that there can be no doubt that the letter dated 5th April, 1957, can be explained only on the basis that the assessees acted as

buying agents. The criticism of the Board of Revenue that the endorsement of the purchaser confirming the transaction was on 12th April, 1957,

does not in any way detract from the character of the transaction as buying agency transaction. The date 12th April, 1957, represents the date on

which the goods were delivered. The eight documents, which are referred to by the Board of Revenue, lead to this only conclusion that the

assessees had acted as buying agents. The Board of Revenue appears to have been of the opinion that, as the order was placed by the assessees

with the Kerala dealer on a date earlier than the actual confirmation received from the ultimate purchaser, it must be held that the order was placed

with the Kerala dealer by the assessees in their own independent capacity. We are of the opinion that this perspective of approach is clearly

wrong. The fact (assuming it to be so) that the assessees had placed the order, anticipating a ratification or confirmation of this order by the

ultimate buyer, which confirmation was obtained later on, does not make the transaction any the less a buying agency transaction.

7. As to the animus or the intention with which the assessees placed the order with the Kerala dealer, we have no doubt that they acted only as

buying agents.

8. One other circumstance which was relied on by the Board of Revenue in rejecting the claim of the assessees was that in some transactions the

assessees had not only charged commission but also debited the customer with interest. We have perused the account books of the assessees and

also all the pattials, bills and vouchers. We find that in some of the transactions such interest has been debited evidently because the assessees had

cleared the goods borrowing money from other sources'' and they must have paid interest on those borrowings debiting the buyer with that

amount. This circumstance, in our opinion, does not affect the real substance of the transactions which are buying agency transactions. There are

also several transactions in which no interest was charged.

9. As regards the second and third categories, the only point of distinction made by the Board of Revenue was that the goods booked in

pursuance of orders of several purchasers Were clubbed together and, therefore, it would not be possible to pick out from one single consignment,

which portion of the goods was meant for one customer as distinguished from the portion meant for another. This is a wholly irrelevant

consideration. It is familiar knowledge that merchants, who act as commission agents, book orders on behalf of several customers and get a single

consignment and later on deliver the goods as per the orders placed by the various customers. Learned Government Pleader contended that if the

goods were all clubbed together and if on account of some risk in the course of transit some portion of the goods had been lost, it would not be

possible to apportion the loss to any particular purchaser. This again is an irrelevant circumstance in determining the true nature of the transaction.

The considerations which apply to category 1 equally apply to categories 2 and 3.

10. The learned Government Pleader urged another argument that in the ""C"" declaration forms, the assessees have stated that they have purchased

the goods for sale and they have not mentioned specifically that they have purchased goods on behalf of the principals. We do not agree with this

contention. If the correspondence, which we have already adverted to, showed that the assessees acted as buying agents, the fact that the

assessees had given incorrect or wrong particulars in the ""C"" forms will not convert the buying agency transactions into transactions of purchase by

the assessees for their own benefit. They might have done this to enable their sellers to obtain a lower rate of tax.

11. We therefore reverse the order of the Board of Revenue so far as the purchasing agency transactions are concerned and hold that the

assessees are entitled to exemption in respect of those transactions as they have satisfactorily proved them to be buying agency transactions. There

will be no order as to costs.

