

(1997) 12 MAD CK 0137

In the Madras High Court

Case No : Tax Case (Revision) No's. 642, 648, 683, 701, 702, 706 to 709, 748, 799, 800, 966, and 968 of 1995 (Revision No's. 265, 266, 272, 290 294 to 297, 331, 345, 346, 391 and 393 of 1995)

Lanco Packers and others

APPELLANT

Vs

State of Tamil Nadu and others

RESPONDENT

Date of Decision : 24-12-1997

Acts Referred:

Central Sales Tax Act, 1956 — Section 3

Tamil Nadu General Sales Tax Act, 1959 — Section 16

Citation : (1997) 12 MAD CK 0137

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

Bench : Division Bench

Advocate : C. Natarajan, for the Appellant; K. Elango, Government Advocate, for the Respondent

Judgement

Janarthanam, J.—In all these actions nine assessee-dealers are involved. They are : 1. Lanco Packers, 2. Tirupathy Traders, 3. Sri Lakshmi Trading Company, 4. Rathinlal Rameshkumar, 5. Rajendra and Company, 6. Baba Palnath and Company, 7. Asoka Traders, 8. Malpani and Company and 9. Hari Narayan Chabil Chand.

2. T.C. (R) Nos. 642 and 799 of 1995 relate to Lanco Packers for two assessment years, viz., 1986-87 and 1987-88.

3. T.C. (R) Nos. 701 and 702 of 1995 relate to Rajendra and Company for two assessment years, viz., 1985-86 and 1988-89.

4. T.C. (R) Nos. 706 and 800 of 1995 relate to Baba Palnath and Company for two assessment years, viz., 1985-86 and 1987-88.

5. T.C. (R) Nos. 707, 708 and 709 of 1995 relate to Asoka Traders for three assessment years, viz., 1985-86, 1987-88 and 1988-89.

6. T.C. (R) No. 966 of 1995 relates to Tirupathy Traders for the assessment year

1985-88.

7. T.C. (R) No. 648 of 1995 relates to Lakshmi Traders for the assessment year 1988-89.

8. T.C. (R) No. 683 of 1995 relates to Rathinlal Rameshkumar for the assessment year 1985-86.

9. T.C. (R) No. 748 of 1995 relates to Malpani and Company for the assessment year 1988-89.

10. T.C. (R) No. 968 of 1995 relates to Hari Narayan Chabil Chand for the assessment year 1986-87.

11. All the aforesaid assessees are dealers in turmeric at Erode. They, it is said, for the relevant assessment years either effected inter-State sales to dealers outside the State against the issuance of "C" forms or effected consignment sales to their agents outside the State against the issuance of "F" forms.

12. Original assessment orders, it appears, were passed accepting the "C" forms and "F" forms produced by the dealers' agents and thereby levying tax at concessional rate for all transactions covered by "C" forms and exempted the transactions covered by "F" forms from levying tax.

13. Subsequently, it appears that on the basis of the information received, the assessments were reopened u/s 16 of the Tamil Nadu General Sales Tax Act, 1959 and revised assessment orders were passed for the various assessment years, besides imposing the penalty in a quantified sum. The information received was to the effect that though the purchasing dealers were registered dealers, yet, they have furnished "C" forms to the assessee dealers-selling, dealers of third parties in a bid to avoid payment of local tax. The further information received was to the effect that the agents who, consignment sales were effected furnished "F" forms issued to third party agents by the department to the assessee-dealers selling dealers in a bid to avoid payment of local tax.

14. Aggrieved by the revision of assessment orders, so passed, the aforesaid assessee-dealers preferred appeals before the Appellate Assistant Commissioner (C.T.), Erode (for short, "the AAC").

15. The AAC set aside the revised assessment and also cancelled the penalty imposed in the case of the Lanco Packers [petitioner in T.C. (R) No. 642 of 1995] and Tirupathy Traders [petitioner in T.C. (R) No. 966 of 1995] and remanded the matter to the assessing authority with a direction for de novo enquiry.

16. The AAC confirmed the assessment and cancelled the penalty in the cases of Sri Lakshmi Trading Company [petitioner in T.C. (R) No. 648 of 1995] and Rathinlal Ramesh Kumar [petitioner in T.C. (R) No. 683 of 1995], Rajendra and Company [petitioner in T.C. (R) No. 7101 of 1995], Baba Palnath and Company [petitioner in T.C. (R) No. 706 of 1995], Asoka Traders [petitioner in T.C. (R) No. 709 of 1995], Malpani and Company [petitioner in T.C. (R) No. 748 of 1995] and

Hari Narayan Chabil Chand [petitioner in T.C. (R) No. 968 of 1995]. In all these cases "C" form declarations alone were misused.

17. The AAC in the cases of Rajendra and Company [petitioner in T.C. (R) No. 702 of 1995], Asoka Traders [petitioner in T.C. (R) Nos 707 and 708 of 1995] and Baba Palnath and Co. [petitioner in T.C. (R) No. 800 of 1995] confirmed the revision of assessment and cancelled the penalty in so far as relatable to "F" forms with a difference in T.C. (R) No. 707 of 1995 wherein the transactions covering a turnover of Rs. 2,42,000 relatable to "F" forms was remanded.

18. Similarly, in T.C.R. No. 799 of 1995, the AAC deleted the turnover to the tune of Rs. 3,53,290 as being covered by proper "C" form which had been assessed and the balance of turnover to the tune of Rs. 1,28,750 is covered by defective "C" forms and consequently assessed at the differential rate of tax at 6 per cent.

19. The Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore (for short, "the Tribunal") on further appeals by the respective assessee-dealers restored the revised assessments.

20. The assessee-dealers raised before the Tribunal twin grounds revolving on the non-publication of notification in an official gazette relatable to the invalidity of "C" and "F" forms and treatment of transactions of consignment sales as inter-State sales without recording a finding that the goods moved pursuant to or incidental to a contract of sale u/s 3(a) of the Central Sales Tax Act, 1956 (for short, "the CST Act"). The twin grounds, as above, have not at all been duly considered and the findings given therefore by the Tribunal, while restoring the revised assessments, as made by the assessing officer.

21. Further, the Tribunal, while reversing the orders of the AAC relatable to matters covered by T.C. (R) Nos. 642 and 966 of 1995 had not stated anything as to how the orders of the AAC went wrong. No doubt true it is, the Tribunal as an appellate authority, is within its rights to take a different view on a question of fact. But, that should be done by it after adverting to the reasons given by the AAC in arriving at finding in question. It is not necessary for the Tribunal to state as to how the orders under appeal is not right. But, it is definitely necessary for it to say how the orders were wrong. The Tribunal had not stated anything on this aspect of the matter.

22. Mr. C. Natarajan, learned Senior Counsel appearing for the assessees virtually reiterated the bone of contentions raised before the Tribunal, which were not admittedly answered, as stated above and that apart, he would vehemently contend that the Tribunal gravely erred in reversing the well reasoned orders of AAC related to matters governed by T.C. (R) Nos. 642 and 966 of 1995 and that without stating as to how the orders of AAC went wrong and in the absence of reasons given thereto, the orders of the Tribunal, reversing the orders of the AAC cannot at all be allowed to stand.

23. Mr. K. Elango, learned Government Advocate for Taxes representing the

Revenue, would, however, repel such submissions.

24. We may now enter into arena of discussions to find out the tenability or otherwise of the rival submissions of either counsel. With so much of anxiety and concern, we perused the common order of the Tribunal in all these actions. Our perusal, did not at all reveal that the Tribunal has considered and given findings relatable to the twin grounds revolving on the non-publication of notification in an official gazette relatable to the invalidity of "C" and "F" forms and treatment of transactions of consignment sales as inter-State sales without recording a finding that the goods moved pursuant to or incident of a contract of sale u/s 3(a) of the CST Act. The non-consideration and non-recording of findings on those twin grounds are serious lacunae, getting reflected from the common order of the Tribunal. Serious legal consequences will flow upon the publication or otherwise of the notification in an official gazette relatable to the invalidity of "C" and "F" forms. If there is publication of notification in an official gazette as respects the invalidity of "C" and "F" forms much earlier to the furnishing of "C" or "F" forms relatable to the transaction governing the instant cases, then, the assessee-dealers-selling, dealers could have no defence at all, in the sense of themselves being deprived of the concessional benefit of rate of tax in respect of inter-State sales effected by them. In case there is no publication of notification in an official gazette regarding the invalidity of "C" and "F" forms, the assessee-dealers-selling dealers would be entitled to have the benefit of the concessional rate of tax in respect of inter-State sales effected by them. Therefore, without a finding given by the Tribunal as respects the publication of notification in the official gazette regarding the invalidity of "C" and "F" forms, the assessee-dealers-selling dealers" entitlement or otherwise to the concessional rate of tax is incapable of being decided.

25. The line of thinking of the Tribunal as is getting reflected in its order was that there was existence of the relationship of the principal and agent between the assessee-dealers-selling dealers and the alleged consignment agents and on that footing alone, the principal assessee-dealers-selling dealers were vicariously mulcted with liability for penalty. Once, such a relationship is in existence, as found by the Tribunal, we are not able to comprehend as to how the consignments effect to them would fall within the arena of inter-State sales as exigible to appropriate rate of tax depending upon the production or otherwise of "C" forms. Further, the Tribunal did not at all give any sort of an opportunity to the assessee-dealers-selling dealers to prove by evidence aliunde that the consignments were effected by them to their consignment agents for local sales. If an opportunity had been provided to them in that regard, there was likelihood of adduction of evidence relatable to the movement of goods for consignment sales through their agents. Only in such an eventuality, it is legally permissible to make an adverse inference that the goods moved from the State of Tamil Nadu pursuant to or incident of a contract of sale to the ultimate buyers outside the State. Above all, no finding had been recorded by the Tribunal that the goods, in fact, had moved pursuant to or incident of a contract of sale to ultimate buyers

outside the State.

26. In rest of the matters, excepting T.C. (R) Nos. 642 and 966 of 1995, the aspects as stated above, would fall for consideration.

27. In T.C. (R) Nos. 642 and 966 of 1995, the question falling for determination is altogether different and this is discernible from the very argument projected by the learned counsel appearing for the assessee, as stated above. We have already referred to the lacunae in the order of the Tribunal pertaining to the transactions covered by T.C. (R) Nos. 642 and 966 of 1995. We may be rest content to refer to the observations made in one or two decisions, as implicitly relied upon by the learned Senior Counsel, on this aspect of the matter.

(i) In *The Dollar Company, Madras Vs. Collector of Madras*, what their Lordships of the Supreme Court observed in paragraph 4 of page 1671 is relevant and it reads as under :

"..... A court of appeal interferes not when the judgment under attack is not right but only when it is shown to be wrong"

(ii) In *S.V.R. Mudaliar (Dead) by Lrs. and Others Vs. Rajabu F. Buhari (Mrs) (Dead) by Lrs. and Others*, we may get the relevant observations made by their Lordships in paragraphs 14 and 15 and they read as under :

Paragraph 14 :

"..... though the appellate court is within its right to take a different view on a question of fact, that should be done after adverting to the reasons given by the trial Judge in arriving at the finding in question.....an appellate court should interfere with the judgment under appeal not because it is not right, but when it is shown to be wrong, as observed by three-Judge Bench of this Court in *The Dollar Company, Madras Vs. Collector of Madras*,"

Paragraph 15 :

"..... the appellate Court has to bear in mind the reasons ascribed by the trial Court. This view of ours finds support from what was stated by the Privy Council in *Rani Hemant Kumari v. Maharaja Jagadhindra Nath* (1906) 10 C WN 630, wherein, while regarding the appellate judgment of the High Court of Judicature at Fort William as "careful and able", it was stated that it did not "come to close quarters with the judgment which it reviews, and indeed never discusses or even alludes to the reasoning of the Subordinate Judge".

28. The observations, as above made by the apex Court, fit in nicely on all fours with the factual matrix in T.C. (R) Nos. 642 and 966 of 1995.

29. For the reasons given above, the common order of the Tribunal pertaining to matters covered by T.C. (R) Nos. 642 and 966 of 1995 deserves to be set aside and the orders of the AAC require to be restored. The common order of the Tribunal relatable to the tax case petitions, viz., T.C. (R) Nos. 648, 683, 701,

702, 706 to 709, 748, 799, 800 and 968 of 1995 also deserves to be set aside and remitted back to the Tribunal for consideration afresh.

30. In fine, the common order of the Tribunal relatable to matters covered by T.C. (R) Nos. 642 and 966 of 1995 is set aside restoring the order of the AAC. Further, the common order of the Tribunal relatable to T.C. (R) Nos. 648, 683, 701, 702, 706 to 709, 748, 799, 800 and 968 of 1995 is also set aside and all these matters are remitted back to the Tribunal for a fresh look and disposal in accordance with law. There shall, however, be no order as to costs.