

(1975) 04 MAD CK 0021

In the Madras High Court

Case No : T.C. No. 369 of 1970 and Revision No. 239 of 1970

Madras Radiators and Pressings

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 10-04-1975

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 13, 2, 3, 7

Citation : (1975) ILR (Mad) 17 : (1976) 37 STC 123

Hon'ble Judges : V. Ramaswami, J;Sethuraman, J

Bench : Division Bench

Advocate : C. Natarajan, for the Appellant; K. Venkataswami, Additional Government Pleader, for the Respondent

Judgement

V. Ramaswami, J.—The petitioners are manufacturers and dealers in tractor parts, automobile parts, etc., at Avadi. In respect of the assessment year 1966-67, they returned a taxable turnover of Rs. 6,93,495.63. In arriving at this figure, they have excluded from the total turnover a sum of Rs. 10,360.70 as representing the amount refunded by them in respect of the goods returned by the customers. They also claimed that they are not liable to pay sales tax on their sales of scrap amounting to Rs. 13,308.32, on the ground that they are not dealers in scrap. We have not set out the other facts relating to the assessment year as only these two items are in dispute in this. The assessing officer disallowed the claim relating to the refund on the ground that there were no details available from which the sales returns could be correlated to the sales effected and that since it had not been proved that the goods had been returned within a period of six months after the date of sale, the claim for deduction is not admissible u/s 13(5) of the Tamil Nadu General Sales Tax Act, hereinafter called the Act. It was the case of the assessee that goods were sold throughout the year and as and when they were returned, refund was effected and that they could not correlate the return to a particular sale. It is in those circumstances, the assessing officer was not able to decide whether the return was within a period of six months. Both the Appellate Assistant Commissioner and the Tribunal

agreed with this view of the assessing authority and held that the disputed turnover was not admissible for deduction. In respect of the other turnover of Rs. 13,308.32 representing sales of scrap, the authorities took the view that the scrap is the by-product of the assessee's business and that, therefore, they are liable to be assessed to sales tax on the sale value of the scrap.

2. In respect of the disputed turnover of Rs. 10,360.70, representing the amount refunded in respect of goods returned, the learned Counsel for the petitioners contended that though they might not be entitled to claim the benefit of Section 13(5) of the Act, they are entitled to deduct that amount from the total turnover under Rule 5-A(b)(i) of the Tamil Nadu General Sales Tax Rules, 1959, hereinafter called the Rules. In order to understand the relative scope of Rule 5-A and Section 13(5), it is necessary to notice certain provisions of the Act and the legislative history. Section 2(p) defines the words "taxable turnover" as meaning the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover and in such manner as may be prescribed. Rule 6 of the Rules prescribed the manner in which the taxable turnover is to be determined. Total turnover is defined in Section 2(q) as meaning the aggregate turnover in all goods of a dealer at all places in the State whether or not the whole or any portion of such turnover is liable to tax. Turnover itself is defined in Section 2(r) as meaning the aggregate amount for which the goods are bought or sold. It is not necessary to notice the other portion in the definition of "turnover", but explanation (2)(iii) to the definition of "turnover" provided that subject to such conditions and restrictions, if any, as may be prescribed in this behalf, any amount refunded in respect of articles returned by customers shall not be included in the turnover. In exercise of this power to prescribe, Rule 5-A(b)(i) provided that :

All amounts refunded to purchasers in respect of goods returned by them to the dealer when the goods are taxable on the amount for which they have been sold...

shall be excluded in the total turnover of a dealer, provided that the accounts show the date on which the goods were returned and the date on which and the amount for which refund was made or credit was allowed to the purchaser.

3. We shall proceed to consider the effect of these provisions without reference to Section 13(5) of the Act, which was introduced by Madras Act 15 of 1964, as that will have a bearing on the interpretation of Section 13(5) itself. The argument of the learned Counsel for the petitioners was that the assessee could only get a deduction from the total turnover of the amount refunded in respect of goods returned to them only in the year in which the refund was made and he could not deduct the amount refunded in any other previous year, even though the sale with reference to which the refund was made was effected in that earlier year. In support of this contention, the learned Counsel also relied on the decision of this Court in *Devi Films (Private) Ltd. v. State of Madras* [1961] 12 S.T.C. 274. and a decision of the Andhra Pradesh High Court reported in *State of*

Andhra Pradesh v. Vauhini Pictures Private Ltd. [1962] 13 S.T.C. 847. Per contra, the learned Government Pleader contended that Section 3, which is the charging section, refers to the turnover for each year and the definitions of "taxable turnover", "total turnover" and "turnover" in Section 2 will have to be understood only as referring to the turnover for each year and, if so understood, a deduction in respect of a return under Rule 5-A(b)(i) could only be with reference to an amount refunded in respect of a sale effected during that year itself and if the sale was in one assessment year and the refund was in the subsequent assessment year, the refund could not be deducted for ascertaining the total turnover.

4. It is true that the charging section refers to the total turnover for each year, but the definitions of the words "turnover", "total turnover" and "taxable turnover" do not refer to the assessment year as such. If the sale is complete, liability for tax is attracted. The fact that the goods are returned and the money refunded in the assessment year itself or in any subsequent year will not relieve that sale from the liability to tax. Explanation (2)(iii) to Section 2(r) and Rule 5-A(b)(i) only mitigated this rigour of the law. It enabled the dealer who was made to pay tax on the sale to get a deduction of the amount refunded at a subsequent stage. Having regard to this object, we do not think that there is any reason to restrict the operation of Rule 5-A(b)(i) to a case of refund within the assessment year itself. Rule 5-A(b)(i) itself does not state that the amounts refunded shall be excluded from the total turnover of the year in which the sale took place. On the other hand, the words "when the goods are taxable on the amount for which they have been sold" show that the condition for deduction is that the amount for which the goods were sold should have been taxable when they were sold. The rule has no reference to the year in which the goods themselves were sold. It is true, as the learned Government Pleader contended, that normally one would expect an amount to be deducted from a total turnover on the ground of refund only if the amount had already been included in the total turnover. But, unless the rules are clear and suggest that the amount refunded will have to be deducted only if the sale price had been included in that particular turnover, we are unable to put such strict construction on the rule. In fact, if that construction is permitted, many of the dealers who had effected sales towards the end of the assessment year might not be able to get the benefit of that rule, as the goods might have been returned in the succeeding year. Therefore, as the Rules stood then, we are of the view that the dealer was entitled to exclude the amount refunded from the total turnover in the year in which the refund was made. This was the view expressed by this Court in *Devi Films (Private) Ltd. v. State of Madras* [1961] 12 S.T.C. 274. with reference to the corresponding Rule 5(1)(b) of the Madras General Sales Tax (Turnover and Assessment) Rules. It was held in that case that :

If an allowance is made against the goods returned, the deduction can be claimed only in the year in which that allowance has been made and to the real extent of that allowance, independent of the date of the sale. The rule itself

makes that clear. The date of the sale decides the inclusion in the assessee's assessable turnover. The date of the allowance determines the exclusion from the gross turnover under Rule 5(l)(b).

5. A similar view was taken by the Andhra Pradesh High Court in *State of Andhra Pradesh v. Vauhini Pictures P. Ltd.* [1962] 13 S.T.C. 847., with reference to the corresponding rule 6(l)(b)(i) of the Andhra Pradesh General Sales Tax Rules, 1957. The learned Judges observed in that case :

We find that Rule 6(l)(b)(i) discretely omits to mention that the deduction claimed for refund of price in regard to the return of goods should be confined only to a particular period. All that rule mentions is that when goods are taxable on sales, the amounts allowed to purchasers in respect of the goods returned by the purchasers to the dealer is an allowable item. Further on, the condition laid down in that rule (despite repetition) says "provided the accounts show the date on which the goods were returned and the date on which and the amount for which refund was made". It looks to us that the mention of the date is not with a view to find out when the claim for deduction has arisen, but only to make it feasible for the taxing authority to verify when the goods were got by the seller and how refunds were made in respect of them. Therefore, to have to read into this fact that the date of the return of the goods is to be specified by the assessee and that a revaluation in respect of the time of the transactions is also implied with a view to restrict deductions in the year of assessment, is not warranted by the language of this rule. Nor can it be said that this rule was contemplating the taking into account of the return of the goods only in the assessment year and not in regard to goods sold out previously but were returned in the assessment year. No doubt, the learned Government Pleader contends that the computation of the turnover for assessment after making deductions in respect of the refund for sales in the previous years could not have been thought of at all by the taxing statute. But we are unable to accede to this way of reading the rule, because there is the simple fact that if that was meant to be the way in which that rule should operate, nothing, in our view, prevented the rule-making authority to have been specific about it, and to expressly impose limitations in definite words instead of asking us to so construe it without the basis therefor.

6. The learned Government Pleader sought to distinguish both these decisions on the ground that the provisions considered in these decisions were originally included in the rule relating to the determination of the "taxable turnover" and it is now included in the rule relating to the determination of the "total turnover" itself. According to the learned Counsel, this has entirely changed the scope of that provision. According to the learned Counsel assess-ability of a dealer either to the tax u/s 3 or compounding u/s 7 depended on the volume of the business transacted by him during a particular year, whether the transactions were taxable or not. That follows from the definition of total turnover which stated that it means the aggregate turnover in all goods of a dealer at all places of business in

the State whether or not the whole or any portion of such turnover is liable to tax. The effect of now making Rule 5-A(b)(i) as part of the rule for determination of the total turnover was to exclude the refunded amount from the total turnover itself. In this connection, he also relied on the phraseology adopted in Rule 6 to which the provision originally belonged and the present Rule 5-A(b)(i). In Rule 6 relating to the determination of the taxable turnover, it was provided that the amount refunded would have to be "deducted" from the total turnover; whereas in Rule 5-A, the refunded amount would have to be "excluded" from the total turnover. This change in the phraseology, according to the learned Counsel, would show that the refunded amount shall not be treated as part of the total turnover at all and, therefore, no question of deduction of that amount from the total turnover would arise. In other words, you do not take out something unless it is included in it. Therefore, the refund must be relatable to a transaction which took place in that year as the total turnover itself contemplates transactions of that year. The argument is very attractive, but we are unable to agree. It is true that the total turnover has a bearing on the assessability of a dealer and that total also is with reference to a particular assessment year, but as stated already, a dealer would be liable to pay sales tax on the transaction of sale and he will not be entitled to exclude any refunds effected whether in that year or in any subsequent year unless there is a statutory provision enabling him to do so. While Rule 5A(b)(i) excluded the refund from the total turnover it did not affect the liability of the original sale. The use of the word "exclude" from the total turnover would have been significant if the original sale itself was not made taxable if there was a return of the article by the purchaser. Rule 5-A(b)(i) directed the exclusion of the amount refunded in respect of articles returned but did not make the original sale itself not taxable. Since the liability to tax on the original sale is not affected by the rule, the use of the word "exclude" loses all significance and takes the same meaning as a deduction. Once we arrive at the position that the liability to tax of the original sale is not affected there was no need for the rule to restrict the deduction to the year of sale. Therefore, the rule enabled the dealer to deduct the amount refunded in the year in which the refund was effected.

7. In other words, irrespective of the date of sale the rule has fixed the date of refund as the relevant date for purposes of deduction from the total turnover. Thus, the position under Rule 5-A(b)(i) was that a dealer can claim deduction in respect of the refund only in the year in which it was refunded and was not obliged to deduct the same in the year in which the sale took place if the year of sale and the year of refund were different.

8. This might work hardship in some cases, as a dealer who had effected sales towards the end of the year and which was returned in the beginning of the succeeding year might well like to include the refund in the year in which the sale itself was effected in order to show better trading results. But, that he was not permitted, because the rule enabled him to deduct the amount only in the year in which the refund was effected. When this was the position, Section 13(5) was

inserted by Madras Act 15 of 1964. That provision, as it stood in the relevant period, read as follows :

Where a dealer has refunded the price of articles returned by customers together with the tax collected from such customers in respect of the sale of such articles and where the amount representing the price refunded by the dealer is included in his turnover, the dealer shall be entitled to claim deduction of the tax levied in respect of such sale, within a period of six months from the date of sale by adjustment in the assessment and the final assessment shall be completed accordingly but such dealer shall not be entitled to claim any adjustment or refund of the tax in respect of the sale of such articles after the expiry of the said period of six months.

9. It is seen from this provision that if the return was within 6 months after the date of sale and the sale and refund were in different assessment years, the dealer could get a deduction of the refund from the total turnover of the year in which the sale was effected. Thus, what Rule 5-A did not enable, Section 13(5) enabled. This is also clear from the objects and reasons for the amendment and inclusion of Section 13(5). The objects and reasons run as follows:

Under explanation (2) to the definition of "turnover" in Section 2(r), any amount refunded in respect of articles returned by customers shall not be included in the turnover of a dealer. But when such articles are sold by a dealer at the close of a financial year and customers return those articles and obtain refund of the price from the dealer some time after the close of that year, the dealer is unable to exclude the amount of price so refunded by him from his turnover before he furnishes his return for that year. It is considered necessary that he should be enabled to claim deduction of the tax included in his assessment in respect of the sale of such articles. It is not however considered necessary that a dealer should have the benefit of claiming such deduction of tax or refund of such tax for any indefinite period. It is accordingly proposed to amend Section 13 of the said Act to allow adjustment of the amount of such tax in the assessment only if the dealer makes his claim within a period of six months from the date of sale.

10. Thus, Section 13(5) and Rule 5-A(b)(i) deal with different rights of a dealer. If a dealer satisfies the conditions u/s 13(5) he could have the refunded amount deducted in the year in which the sale took place irrespective of the fact that the refund itself was given in the succeeding year. In cases where he is not entitled to have it excluded in the same assessment year or in cases where he opts to claim deduction of the refund in the year in which he refunded the amount, he would be entitled to do so under Rule 5-A(b)(i). That, in our opinion, is the relative scope of Section 13(5) and Rule 5-A(b)(i). The result is, the petitioners are entitled to deduct the sum of Rs. 10,360.70 from the total turnover of the assessment year 1966-67, It is noted in the judgment of the Tribunal that out of this amount, a sum of Rs. 2,506.66 is taxable at 6 1/2 per cent and the balance of Rs. 71,854.04 at 1 1/2 per cent. The petitioners will be entitled to reliefs on this basis.

11. The second contention of the petitioners that the turnover of Rs. 13,308.32 relating to sale of scrap is not liable to sales tax is untenable. Apart from the fact that it is a by-product, it has been held by the Supreme Court in *State of Tamil Nadu v. Burmah Shell Co. Ltd.* [1973] 31 S.T.C. 426, that a turnover relating to incidental business also would be liable to tax in the hands of the revenue. In view of this judgment of the Supreme Court, clearly the turnover of Rs. 13,308.32 is liable to be included in the taxable turnover. No other point arises in this tax revision case. The tax revision is, therefore, allowed to the extent of the refunded amount disputed in this case and dismissed in so far as it related to the sales of scrap. There will be no order as to costs