

(1954) 03 MAD CK 0022

In the Madras High Court

Case No : Tax Revision Case No. 180 of 1953

Mahalakshmi Textile Mills Ltd., Pasumalai, Madurai

APPELLANT

Vs

State of Madras

RESPONDENT

Date of Decision : 19-03-1954

Acts Referred:

Constitution of India, 1950 — Article 286(1)
Madras General Sales Tax Act, 1939 — Section 5

Citation : AIR 1954 Mad 937 : (1955) ILR (Mad) 781 : (1954) 67 LW 493 :
(1954) 2 MLJ 314

Hon'ble Judges : Satyanarayana Rao, J; Rajagopalan, J

Bench : Division Bench

Advocate : Alladi Kuppuswami, for the Appellant; Asst. Govt. Pleader, for the Respondent

Judgement

Satyanarayana Rao, J.—The assessee is the owner of a mill at Pasumalai in Madurai district. Under the Cotton Textiles (Export Control) Order, 1949, every mill which manufactures yarn or cloth is obliged to allocate a portion of the yarn or cloth produced for export outside the Indian Union.

2. The assessee was taxed on a sum of Rs. 12,55,350 as representing the turnover of the sales of yarn, which he effected to an exporter. This yarn was admittedly the yarn which he was obliged to retain and sell for export under the Cotton Textiles (Export Control) Order, 1949. Instead of himself selling for export, the assessee sold it to another and that another exported the goods outside India. The assessee had no export licence.

In view of these facts, the Tribunal held that the assessee was not within the exemption in Article 285, Sub-section (1)(b) of the Constitution. The correctness of this is the first point which is raised on behalf of the assessee by Mr. Kuppuswami learned counsel for the assessee.

In view of the two recent decisions of the Supreme Court, we think that the

conclusion reached by the Tribunal is correct and the assessee is not entitled to the exemption. In the first Travancore case, -- "State of Travancore-Cochin v. Bombay Co., Ltd., AIR 1952 SC 366 (A) a sale by export is explained as involving a

"series of integrated activities commencing from the agreement of sale with a foreign buyer and ending with the delivery of the goods to a common carrier for transport out of the country by land or sea. Such a sale cannot be dissociated from the export without which it cannot be effectuated and the sale and resultant export form parts of a single transaction. Of these two integrated activities, which together constitute an export sale, whichever first occurs can well be regarded as taking place in the course of the other".

This view was further amplified in the later Travancore-Cochin case, -- State of Travancore-Cochin and Others Vs. Shanmugha Vilas Cashew Nut Factory and Others, . At page 336 the learned Chief Justice observes :

"The phrase "integrated activities", was used in the previous decisions to denote that "such a sale" (i.e., a sale which occasions the export) "cannot be dissociated from the export without which it cannot be effectuated, and the sale and the resultant export form parts of a single transaction." It is in that sense that the two activities the sale and the export were said to be integrated. A purchase for the purpose of export like production or manufacture for export, is only an act preparatory to export and cannot, in our opinion be regarded as an act done in the course of the export of the goods out of the territory of India, any more than the other two activities can be so regarded."

The conclusions were summed up at page 338 in the form of three propositions :
(i) Sales by export and purchases by import fall within the exemption under Article 236(1)(b). This was held in the previous decision. (ii) Purchases in the State by the exporter for the purposes of export as well as sales in the State by the importer after the goods have crossed the customs frontier are not within the exemption.

(iii) Sales in the State by the exporter or importer by transfer of shipping documents while the goods are beyond the customs frontier are within the exemption, assuming that the State power of taxation extends to such transactions.

In view of these observations it is clear that under Article 286(1)(b) of the Constitution, the sale and the export which are treated as integrated activities are alone exempt if the sale is the occasion for the export and it commences from the time when the agreement of sale was entered into with the foreign buyer. A purchase anterior to it by the exporter and a sale to the exporter by another person would not be within the limits of integrated activity as defined by the Supreme Court. Both the purchase by the exporter and sale by the assessee to the exporter which ultimately exports the goods under a sale are beyond the limits and therefore cannot be treated as a sale in the course of export which

attracts the exemption.

The line has been drawn definitely and clearly by the Supreme Court and notwithstanding the fact that the goods by virtue of the Cotton Textiles (Export Control) Order, 1949, were earmarked by the assessee for the purpose of export and export only, he cannot claim the exemption for it is not the export alone that entitles him to exemption but the sale in the course of export. It is that which attracts the exemption and as in this case the assessee sold the goods to an exporter he has been rightly held not to be entitled to the exemption by the Appellate Tribunal.

3. The second point raised is that as the assessee made certain purchases of cotton through his agents at Them, while the mill is at Pasumalai, without a separate licence for the business which he carried on at Them, he would not be entitled to the benefit of the lower rate u/s 5 of the Act. It is no doubt true that in September 1951, a definition of place of business was added in the Madras General Sales-tax Rules, but that definition does not apply to the present case. Form I (Application for licence) clearly states "Principal place of business and also place of business of each of the branches, as each of them would require a separate licence. Unless therefore it is established that there is a separate branch of the business, he could not be required to obtain another licence for that business. Under the original licence which he obtained for the business at Pasumalai, he would undoubtedly be entitled to the lower rate of tax u/s 5 of the Act.

If a person through his agents makes purchases from various places in the State, merely because of those purchases, apart from the definition which has been later introduced, he cannot be treated as carrying on business at all the places to which his agents went and purchased the goods. The more definite and tangible test is indicated in the licence form No. 1, that there should be a branch of the business and not merely a stray act of purchase through his own agents or by himself.

The view taken by the Appellate Tribunal therefore that a separate licence is required and that he should pay separate fee is not warranted by the rule as it stood during the relevant year. The assessee is entitled to the refund of Rs. 250 licence fee plus the penalty of Rs. 5 levied on him. In this respect the order of the Appellate Tribunal is modified and in other respects the order is confirmed. As the petitioner has substantially failed he will pay the costs of the respondent, Rs. 250/-.