(1997) 09 MAD CK 0103

In the Madras High Court

Case No : T.C. No. 161 of 1990 (Revision Petition No. 68 of 1990)

Manohar Enterprises APPELLANT

Vs

State of Tamil Nadu. RESPONDENT

Date of Decision : 30-09-1997

Acts Referred:

Central Sales Tax Act, 1956 — Section 15, 15(b), 8
Tamil Nadu General Sales Tax Act, 1959 — Section 4

Citation : (1997) 09 MAD CK 0103

Hon'ble Judges : M.S. Janarthanam, J;A. Subbulakshmy, J

Bench : Division Bench

Advocate : K. Ramagopal, for the Appellant; K. Elango, Government Advocate (Taxes), for the Respondent

Judgement

Janarthanam.

1. This revision, at the instance of the assessee, is directed against the order dated December 8, 1989 of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Madras-104 (for short, "the Tribunal") and made in T.A. No. 1273 of 1986 relatable to the assessment year 1983-84 under the Central Sales Tax Act, 1956 (Act No. 74 of 1956 - for short, "the CST Act").

2. The assessee - Tvl. Manohar Enterprises, having their place of business at door No. 59, Nattu Pillaiyar Kovil Street, Madras-1 is stated to be a partnership firm carrying on business in purchase and sale of groundnut seeds. In the course of its business the assessee, it is said, sold the kernels purchased locally and also to the dealers outside the State in the course of inter-State trade or commerce.

3. The disputed turnover in respect of inter-State sales is to the tune of Rs. 28,35,575 taxable at three per cent and the tax due is Rs. 85,067. In respect of the said turnover, it is found, that the sellers, from whom the assessee-dealer effected purchases of groundnut kernels, were either non-existing or were dealers, who misused the certificate of registration of other dealers in effecting

their sales of groundnut.

4. The Deputy Commercial Tax Officer, Peddunaickenpet (North) Assessment Circle, Madras-1 found that the assessee-dealer had not proved that the sales effected in his favour by his sellers had suffered tax, in the sense of the tax having been levied and collected by the department and consequently, the disputed turnover was held to be exigible to tax under the CST Act in the course of inter State trade or commerce.

5. On appeal before the Appellate Assistant Commissioner (C.T.) II, Madras city, the assessee-dealer faced colossal failure, in the sense of the order of the said assessing officer being confirmed by the dismissal of the appeal so preferred.

6. On further appeal, before the Tribunal, the assessee-dealer could not succeed, in the sense of the appeal so preferred having been dismissed, giving rise to the present action.

7. From the projection of the arguments of Mr. K. Ramagopal, learned counsel appearing for the assessee-dealer and Mr. K. Elango, learned Government Advocate (Taxes) representing the Revenue, the point, as below, emerges for consideration :

Whether the assessee-dealer, on the facts and in the circumstances of the case, had established or proved that the groundnut kernel a declared goods in respect of which he had effected purchase locally from dealers had suffered tax, in the sense of the tax being levied and collected in respect of the said declared goods before ever, he effected sales in respect of the said declared good, in the course of inter-State trade or commerce, so as to enable him to get exemption of tax under the CST Act ?

8. The point : There is no bale of controversy that the groundnut kernel is a declared goods, figuring as S. No. 6 in the Second Schedule Containing declared goods in respect of which single point tax only is leviable u/s 4 of the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act No. 1 of 1959 - for short, "TNGST Act").

9(A). Section 8 of the CST Act deals with rates of tax on sales in the course of inter-State trade or commerce. Sub-section (5) thereof reads as under :

"Notwithstanding anything contained in this section, the State Government may, if it is satisfied that it is necessary so to do in the public interest, by notification in the Official Gazette, and subject to such conditions as may be specified therein, direct, -

(a) that no tax, under this Act shall be payable by any dealer having his place of business in the State in respect of the sales by him, in the course of inter-State trade or commerce, from any such place of business of any such goods or classes of goods as may be specified in this notification, or that the tax on such sales shall be calculated at such lower rates than those specified in sub-section (1) or sub-section (2) as may be mentioned in the notification.

(b) that in respect of all sales of goods or sales of such classes of goods as may be specified in the notification, which are made in the course of inter-State trade or commerce, by any dealer having his place of business in the State or by any class of such dealers as may be specified in the notification to any person or to such class of persons as may be specified in the notification, no tax under this Act shall be payable or the tax on such sales shall be calculated at such lower rates than those specified in sub-section (1) or sub-section (2) as may be mentioned in the notification."

(B) Section 15 of CST Act deals with restrictions and conditions in regard to tax on sale or purchase of declared goods within a State. Clauses (a) and (b) thereof relevant for our present purpose read as under :

"15. Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely :-

(a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed four per cent of the sale or purchase price thereof, and such tax shall not be levied at more than one stage;

(b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, and tax has been paid under this Act in respect of the sale of such goods in the course of inter-State trade or commerce, the tax levied under such law shall be reimbursed to the person making such sale in the course of inter-State trade or commerce in such manner and subject to such conditions as may be provided in any law in force in the State;"

10. Pursuant to the salient provisions adumbrated under clause (5) of section 8 of the CST Act, the State Government of Tamil Nadu issued G.O. No. 3602, Revenue, dated 28th December, 1963. According to the said G.O., in respect of all declared goods sold in the course of inter-State trade or commerce, no tax under the CST Act shall be payable by any dealer, where tax has been levied and collected in respect of the sale or purchase of such declared goods u/s 4 of the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act No. 1 of 1959) subject to the following conditions :

(a) the burden of proving that the tax u/s 4 of the Tamil Nadu General Seas Tax Act, 1959 (Tamil Nadu Act No. 1 of 1959) has been levied and collected in respect of any such declared goods shall lie on the dealer; and

(b) the dealer shall not claim refund clause (b) of section 15 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) of the tax levied and collected u/s 4 of the Tamil Nadu General Sales Tax Act, 1959, from the dealer or such tax has not been refunded to him.

11. From the sum and substance of the salient provisions of the TNGST Act, CST Act and the provisions of G.O. No. 3602, Revenue, dated 28th December, 1963, it is crystal clear that a dealer, like the assessee in the instant case, in order to claim exception in respect of inter-State sales effected of a declared goods - that is to say, groundnut kernel has to necessarily prove that he has suffered tax, at the hands of the department, in the sense of the tax having been levied and collected in respect of such declared goods. Thus, the burden slides on the shoulder of the assessee-dealer to prove that the tax in respect of such declared goods had been levied and collected at the hands of his sellers, before ever, the assessee-dealer is entitled to claim exemption in respect of inter-State sales of such declared goods effected by him.

12. The moot question, in the instant case, is as to whether the assessee-dealer has discharged the burden so cast on his shoulders. The answer to such a question, on the facts and in the circumstances of the case, cannot be anyone, except an emphatic "no". The dealers or sellers, from whom the assessee-dealer purchased groundnut kernel, as found by the assessing authorities, inclusive of the Tribunal, is that the said dealers or sellers are either non-registered dealers or dealers, who have misused the registration certificate issued in favour of the other dealers. Such being the case, it cannot at all be stated that the assessee-dealer, purchaser in the instant case, had successfully established that the groundnut kernels, he had purchased from such dealers, had suffered tax at the hands of the department under TNGST Act.

13. In this view of the matter, it cannot at all be stated that the assessment of the disputed turnover at the hands of the assessing authorities as eligible to tax under the CST Act on the sales he had effected in the course of inter-State trade or commerce is not justified under law. We answer the point accordingly.

14. In fine, the tax case (revision) is dismissed. No costs.

15. Petition dismissed.

