

(2006) 08 MAD CK 0150

In the Madras High Court

Case No : Writ Appeal No. 994 of 2006 and Writ Petition No. 22311 of 2006

Maruthi Handling Equipments

APPELLANT

Vs

Deputy Commercial Tax Officer

RESPONDENT

Date of Decision : 10-08-2006

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 10, 23, 3(2), 3(3), 45(2)
Tamil Nadu General Sales Tax Rules, 1959 — Rule 12A

Citation : (2007) 7 VST 261

Hon'ble Judges : A.P. Shah, C.J.; K. Chandru, J

Bench : Division Bench

Advocate : R. Hemalatha, for the Appellant; Haja Naziruddin, Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

A.P. Shah, C.J.—This writ appeal is filed against the order of the learned single Judge dated July 13, 2006 in M. P. No. 2 of 2006 in W. P. No. 22311 of 2006 imposing certain pre-conditions for ordering the miscellaneous petition. As the order passed by the learned Judge is very short, the same is extracted below:

Having regard to the peculiar nature of the case, this court is not satisfied that the seller is not conscious of the provisions of the terms which provides the seller to accept form XVII and the concessional rate of tax in such goods, which could be used as component parts, packing machinery, etc., but whereas in the present case, the seller might be aware that the trolleys sold cannot be used as component parts or packing machinery or the like stated u/s 3(3). Hence the entire blame cannot be shifted to the purchaser. However, this is a prima facie opinion and the case has to be decided on merits at the time of final disposal.

2. In order to safeguard the interest of the seller, which is the subject-matter of the writ petition, there will be an order of interim stay on condition that the petitioner shall furnish bank guarantee for the entire balance tax amount as demanded by the respondent within a period of four weeks from the date of

receipt of copy of this order, failing which, the interim stay granted shall stand automatically vacated, without reference to the court notice.

3. It is open to the petitioner to get 50 per cent bank guarantee from the purchaser.

2. The learned Counsel appearing for the appellant, Ms. Hemalatha, argued that the grievance projected by the appellant is already covered by decisions of this court and of the Supreme Court and there is no reason in imposing condition for granting interim order and the learned Judge should have considered the grievance of the petitioner in the main writ petition itself and granted relief to the appellant.

3. We have heard the learned Counsel appearing for the appellant/petitioner and Mr. Haja Naziruddin, the learned Special Government Pleader (Taxes) appearing for the respondent on taking notice. We have also perused the order passed by the learned single Judge.

4. With the consent of the parties, the writ appeal as well as the writ petition are taken up for hearing.

5. In the writ petition, the appellant/petitioner challenged the order of the respondent-Deputy Commercial Tax Officer, Singanallur Circle, Coimbatore, with reference to the assessment order. The assessing officer in the impugned notice dated May 19, 2006 has held as follows:

The turnover reported agreed with the books of account. All purchases were covered by proper bills. The dealers are manufacturing and supplying hand-operated and power-operated trolleys, which are not eligible for concessional levy u/s 3(3) as it was not consumable, component part, raw material or processing material for the buyer's manufacturing activity. Also it was not included in the eight Schedules for concessional levy u/s 3(3). Therefore, the form XVII filed is treated as invalid and proposed to be assessed to tax at 12.6 per cent in notice dated March 27, 2006. The dealer has not filed any objection. Therefore confirm my proposals.

6. As can be seen, while he agreed with the books of account proposed by the assessee, he erroneously came to the conclusion that the trolleys sold by the assessee are not eligible for consideration of levy u/s 3(3) of the Tamil Nadu General Sales Tax Act, 1959 as it is not consumable, component part, raw material or processing material for the buyer. Therefore, he confirmed his order and assessed the tax at 12.6 per cent.

7. Ms. Hemalatha, learned Counsel appearing for the appellant/petitioner, submitted that the issue relating to assessment of tax in terms of Section 3(3) has been considered by this court in Premier Electro-Mechanical Fabricators v. State of Madras [1968] 22 STC 269 and a division Bench went into the issue and held as follows:

What Section 3(3) enacts is that, notwithstanding what is contained in Sub-section (2), a dealer is entitled to the concessional rate as a matter of right, provided he satisfies the requisites of that sub-section. The requisites are three-fold : (1) The goods, which are the subject-matter of sale, should be those mentioned in the First Schedule, (2) the sale must be to another dealer and (3) the goods sold should be for the use by the purchaser as component parts of any other goods mentioned in the First Schedule, which he intends to manufacture inside the State for sale. If these requisites are satisfied, the lower rate of tax under Sub-section (3) will apply. So far as the first requisite is concerned, the assessing officer himself has treated the goods sold as falling within the First Schedule. It was only on that basis he charged three per cent. There is no dispute about the second requisite being satisfied, for the purchaser is undoubtedly a dealer. The misapprehension of the department is particularly in respect of the third requisite. The assessee satisfies the requisite, if he complies with the proviso, and he is not called upon, beyond production of a declaration in form XVII, to show that the declaration has been given effect to. It is true that, in order to satisfy the third requisite, the goods sold should be for use by a purchasing dealer as component parts of some other goods to be manufactured. But the manner in which the seller has to satisfy the requisite is as provided in the proviso to the subsection, namely, production of the declaration in the prescribed form. Once that is done, there is no further obligation on the part of the selling dealer and he will automatically be entitled to the concessional rate. If the declaration turns out to be false, in the sense that the goods purchased have not been used as declared in the prescribed form, the purchaser is exposed to the penalties provided by Section 23 and Section 45 (2)(e). If the purchaser will make a false declaration or a declaration which he does not comply with, he would do so under peril of meeting those penalties. But on that account, the selling dealer is not deprived of the concessional rate. The physical changes which the Board mentioned do not appear to us to bring about any substantial change to the fact that the goods sold will fall within the First Schedule and are to be used as component parts by the purchasing dealer in the manufacture of some other goods falling within that Schedule.

8. Subsequently, the Supreme Court also had an occasion to consider a similar provision relating to Central sales tax reported in *Chunni Lal Parshadi Lal v. Commissioner of Sales Tax*, U. P. [1986] 62 STC 112 and the Supreme Court while dealing with the purpose behind the rules, held as follows :

...The purpose for the making of the rule would, however, be frustrated if after the dealer proves in the manner indicated in Rule 12-A he has to prove again how the purchasing dealer has dealt with the goods after he obtains the certificate from a registered dealer. That would make the working of the Act and rule unworkable.

9. On the question of liability of the seller, the Supreme Court in its judgment at pages 120 and 121 held as follows:

...This court observed that indisputably the seller could have in these transactions no control over the purchaser. He had to rely upon the representation made to him. He must satisfy himself that the purchaser was a registered dealer, and the goods purchased were specified in his certificates but his duty extended no further. If he was satisfied on these two matters on a representation made to him in the manner prescribed by the rules and the representation was recorded in the certificate in form C, the selling dealer was under no further obligation to see to the application of the goods for the purpose for which it was represented that the goods were intended to be used. If the purchasing dealer misapplied the goods he incurred a penalty u/s 10 of that Act. That penalty was incurred by the purchasing dealer and could not be visited upon the selling dealer. The selling dealer was under the Act authorised to collect from the purchasing dealer the amount payable by him as tax on the transaction, and he could collect that amount only in the light of the declaration mentioned in the certificate in form C....There was nothing in the Act and the Rules that for infraction of the law committed by the purchasing dealer by misapplication of the goods after he purchased them, or for any fraudulent misrepresentation by him, penalty might be visited upon the selling dealer.

This court further observed that if the purchasing dealer held a valid certificate specifying the goods which were to be purchased and furnished the required declaration to the selling dealer, the selling dealer became, on production of the certificate, entitled to the benefit of Section 8(1) of that Act...

...We are of the opinion that this submission has to be accepted. After all the purpose of the rule was to make the object of the provisions of the Act workable, i.e., realisation of tax at one single point, at the point of sale to the consumer. The provisions of the rule should be so read as to facilitate the working out of the object of the rule.

An interpretation which will make the provisions of the Act effective and implement the purpose of the Act should be preferred when possible without doing violence to the language. The genuineness of the certificate and declaration may be examined by the taxing authority but not the correctness or the truthfulness of the statements. The sales tax authorities can examine whether certificate is "farzi" or not, or if there was any collusion on the part of selling dealer-but not beyond-i.e., how the purchasing dealer has dealt with the goods.

10. In the light of the clear pronouncement of this court as well as the Supreme Court, we think that the claim made by the appellant/petitioner in the writ petition is bound to succeed and the order of the respondent/ Deputy Commercial Tax Officer is liable to be quashed.

11. In view of the above, we allow the writ appeal and set aside the order passed by the learned single Judge in M.P. No. 2 of 2006 in W. P. No. 22311 of 2006. Further, in view of the binding precedents of this court and the Supreme Court,

the writ petition stands allowed and the order of the respondent/Deputy Commercial Tax Officer dated January 19, 2006 stands quashed. The respondent is directed to consider the case of the writ petitioner/appellant in the light of this judgment and also in accordance with law. However, there will be no order as to costs. Consequently, M. P. No. 1 of 2006 in W. A. No. 994 of 2006 and M. P. No. 2 of 2006 in W. P. No. 22311 of 2006 shall stand closed.