
(1972) 08 MAD CK 0032

In the Madras High Court

Case No : T.C. No. 149 of 1967 (Appeal 17 of 1967)

Mettur Spinning Mills

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 09-08-1972

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 34

Citation : (1973) 31 STC 511

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

Bench : Division Bench

Advocate : K. Ramgopal, for the Appellant; First Assistant Government Pleader (Taxes), for the Respondent

Final Decision : Allowed

Judgement

Ramanujam, J.—The disputed turnover before us is a sum of Rs. 1,60,031.16. This said sum represents the value of cotton purchased by the assessee from Volkart Brothers. According to the assessee, the said purchase of cotton was in the course of import. The contention was negatived by the assessing authority, but the Appellate Assistant Commissioner upheld the contention. The Board of Revenue, however, in exercise of its power u/s 34 of the Madras General Sales Tax Act, 1959, suo motu set aside the order of the Appellate Assistant Commissioner in this regard and restored the order of the assessing authority so far as this turnover is concerned. The question is : whether the view taken by the Board of Revenue that the purchase was not in the course of import is correct.

2. The facts, as found by the authorities below and in respect of which there is no dispute, are these : The assessee got an import licence for the import of a special variety of cotton from the United States of America and Africa and the import licence specifically stated that the goods imported were for the actual use of the assessee in its own mills. This import licence was entrusted by the assessee to Volkart Brothers with a letter of authority and they were authorised to import the cotton. In pursuance of the said licence, Volkart Brothers actually

imported the cotton and sold the same to the assessee. According to the assessee the importer, Volkart Brothers, cannot sell the cotton to anyone else, as the cotton had been imported on the actual user's licence issued to the assessee and that, therefore, the sale by the importer, Volkart Brothers, to the assessee was in the course of import. The learned counsel for the assessee refers to the decision of the Supreme Court in *Khosla & Co. (P.) Ltd. v. Deputy Commissioner of Commercial Taxes, Madras* [1966] 17 S.T.C. 473 and *Larsen & Toubro Ltd. v. Joint Commercial Tax Officer, Madras* [1967] 20 S.T.C. 150, as supporting the stand taken by him. The Board of Revenue had distinguished the case of the Supreme Court in *Khosla & Co. (P.) Ltd. v. Deputy Commissioner of Commercial Taxes, Madras* [1966] 17 S.T.C. 473, on the ground that in that case there was a specific provision that the goods were to be manufactured in Belgium, according to the specification of the buyers and that the buyers representative had to inspect the goods at the works of the manufacturer in the foreign country. The Board of Revenue took the view that the decision in *Khosla & Co. (P.) Ltd. v. Deputy Commissioner of Commercial Taxes, Madras* [1966] 17 S.T.C. 473 rested on these two distinguishing factors and that these distinguishing factors did not obtain in the present case. We are not in a position to accept the view that there is any distinction between the facts of the case in *Khosla & Co. (P.) Ltd. v. Deputy Commissioner of Commercial Taxes, Madras* [1966] 17 S.T.C. 473 and of the case here. In *Khosla & Co. (P.) Ltd. v. Deputy Commissioner of Commercial Taxes* [1966] 17 S.T.C. 473, the Supreme Court took the view that the sale by the importer to the local purchaser was a sale in the course of import mainly for the reason that the goods had been specifically imported for the use of the purchaser and that the goods could not be diverted by the importer to any other person and that he had no other choice except to supply the goods to the buyer in whose name the import licence stood. The other factors such as the goods being manufactured to the specification of the buyer and the provision for inspection by the buyer's representative were all referred to for the purpose of showing that the goods were specifically intended for a particular buyer and that the importer had no power to sell the goods to other persons. We are of the view that the facts of the present case squarely fall within the scope of the decision of the Supreme Court in *Khosla & Co. (P.) Ltd. v. Deputy Commissioner of Commercial Taxes, Madras* [1966] 17 S.T.C. 473 as also the decision of this court in *Larsen and Toubro Ltd. v. Joint Commercial Tax Officer, Madras* [1967] 20 S.T.C. 150, which follows the decision of the Supreme Court.

3. In our view, the decision of the Board of Revenue cannot be upheld. The tax case is allowed with costs and the order of the Board of Revenue is set aside. Counsel's fee Rs. 150.