
(2012) 02 MAD CK 0141

In the Madras High Court

Case No : Tax Case (Revision) No's. 1472, 1512, 1526, 1527, 1531, 1542, 1544, 1545, 1556 and 1580 of 2006

M/s. C.R. Tiles, Chennai

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 23-02-2012

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 15
Constitution of India, 1950 — Article 366(29A)
Tamil Nadu General Sales Tax Act, 1959 — Section 2, 3(B)(2)

Citation : (2012) 02 MAD CK 0141

Hon'ble Judges : P.P.S. Janarthana Raja, J;D. Murugesan, J

Bench : Division Bench

Advocate : V. Sundareswaran, for the Appellant; R. Sivaraman, Spl. G.P., for the Respondent

Final Decision : Dismissed

Judgement

D. Murugesan, J.—These batch of Tax Case F19 Revisions are at the instance of the assessee raising the following questions of law:-

1. Whether the Appellate Tribunal was correct in holding that the contract of "supply, laying and polishing of the mosaic tiles" is not works contract

since there is "manufacture" involved, ignoring the definition of "works contract" u/s 2(u) of the Tamil Nadu General Sales Tax Act, 1959, which

includes any agreement for carrying out for cash, deferred payment or other valuable consideration, the building, construction, "manufacture", of

any moveable or immoveable property and the conclusion of the assessing officer and first appellate authority?

2. Whether the petitioner is entitled for the deduction u/s 3B(2)(b) of the Tamilnadu General Sales Tax Act, 1959, in view of the admitted fact that

the petitioner had purchased all the goods locally from the registered dealers inside the State of Tamilnadu and also "used" in the execution of

works contract in the same "form" in which such goods were purchased ?

3. Whether the Appellate Tribunal was correct in appreciating that the statutory mandatory deduction u/s 3B(2)(b) of "all amounts for which any

goods specified in the first or second schedule are purchased from the registered dealer and used in the execution of works contract in the same

form in which such goods were purchased and does not use the words "transferred in the same form in which such goods were purchased" as

contended by the authorities below to disallow the deduction ?

The assessee are the manufacturer of mosaic tiles by making use of raw materials like cement, sand, oxide and powder. On the ground that the

assessee had entered into an agreement with a contractor for laying of mosaic tiles in the form and design intended by the user, they are entitled to

the exemption in terms of Section 3B(2)(b) of the Tamil Nadu General Sales Tax Act. The Assessing Officer found that the assessee had

purchased sand, red-oxide, cement and chips locally and engaged in the manufacturing activity and those goods had been transformed into a

different commodity and in that sense, the transaction would be considered to be a sale. Accordingly, the claim of exemption was refused. That

order was taken on appeal before the first appellate authority, who found that the chips, which were used for the manufacturing activity would fall

under works contract, as the chips do not transform into a different commodity and accordingly, granted the exemption. Insofar as the other

goods, he refused to extend the exemption benefit. As to the refusal of the benefit other than chips, the assessee preferred appeals to the Appellate

Tribunal. Challenging the grant of exemption to the chips as well, the Revenue also preferred appeals. By the common impugned order, the

Tribunal found that the transactions are in the nature of sale and is not works contract and allowed all the appeals in favour of the Revenue. This

order has given rise to the cause for the present Tax Case Revisions.

2. Mr. Sundareswaran, learned counsel had extensively argued before us by drawing the relevant provisions of the Act, particularly, Section 3B,

Section 2(g)(vi), 2(n)(ii) of the Tamil Nadu General Sales Tax Act. In our opinion, a detailed discussion on the above provisions is not required in

the wake of the settled position of law.

3. The purport of the various provisions relating to works contract came up for consideration before a Division Bench of this Court in the judgment

in *Tamil Nadu Mosaic Manufacturers Association v. State of Tamil Nadu and Another* (1995) 97 STC 503 and the Division Bench, after

analysing the provisions, held as follows:-

The settled position of law is that whenever a commercial commodity which has suffered sales tax is transformed into another distinct commercial

commodity, it becomes a separate and distinct commercial commodity for the purpose of levy of sales tax and it can be taxed again and in such a

case, section 15(a) of the Central Sales Tax Act will have no application. When the dealer purchases a commercial commodity which has suffered

sales tax and out of such commercial commodity purchased by the dealer, he manufactures another distinct commercial commodity and uses the

same in the execution of works contract, the commercial commodity purchased the dealer is not used in the execution of the works contract in the

same form in which it is purchased and in such a case what is used in the execution of the works contract is a distinct and different commodity

though manufactured out of the commodity purchased by him and which has suffered sales tax. When the commodity purchased by the dealer and

which has suffered tax, is transformed into another distinct commercial commodity after purchase by the dealer and when it is used in the execution

of the works contract, since the two goods, viz., the commodity purchased by the dealer and the commodity used in the execution of works

contract are distinct and different commercial commodities falling under two different sub-items of an entry u/s 14 of the Central Sales Tax Act, the

question of levying sales tax at more than one stage on the same commodity does not arise. In other words, when the goods used by the dealer in

the execution of the works contract is commercially different from the goods purchased by the dealer, falling under different sub-items of an entry

u/s 14 of the Central Sales Tax Act, the question of contravention of section 15(a) of the Central Sales Tax Act which prohibits levy of sales tax on

declared goods at more than one stage does not arise and on that ground, it cannot be contended that section 3-B is invalid.

4. When the dealer purchases a commodity, which had already suffered tax and

out of such commodity, manufactures another commercial commodity and uses the commercial commodity in the execution of works contract, if such commercial commodity purchased by the dealer is not used in the execution of the works contract in the same form in which it was purchased, in such case, what is used in the execution of works contract is a distinct and different commodity. The assessee has admittedly purchased sand, cement, colour and so on, which goods had suffered tax. But when these goods were used in the manufacturing activity, those goods are transformed into another commercial commodity, namely, mosaic. In that event, the transaction would be considered as one of sale. Subsequently, in the judgment rendered in *Apparels and Handloom Exporters Association and Others v. State of Tamil Nadu and Others*, (2003) 129 STC 167, this Court had an occasion to consider the meaning of the word "whether as goods or in some other form" employed in Article 366 (29-A) of the Constitution of India and ultimately, found in paragraph 10 and 11 as follows:-

10. We are in complete agreement with what has been stated by the court in that case. The court therein specifically rejected the arguments that notwithstanding the change in the form of the goods, the changed form in itself being a taxable commercial commodity under a different head, such change should be ignored and the deduction allowed to be claimed by regarding the goods which had been bought by the dealer executing the works contract as the goods used in carrying out the works contract.

11. Article 366(29-A) was not enacted to confer larger benefits on the persons engaged in carrying out works contract who transferred the properties and the goods used in such contract to the other party to the contract. If a person who is engaged for example in the manufacture of rolling shutters, buys iron and steel for the purpose of manufacture, after paying tax on such purchase, he cannot contend while selling the shutters that no tax should be levied on the shutters as they have been manufactured from iron and steel on which he has already paid tax. The iron and shutters are commercially distinct commodities and are charged to tax accordingly. That position will not change merely because the person who buys the iron or steel, after making the rolling shutter, chooses to transfer the property in the form of shutter to a person who may want to use it in

the home or as an attachment to the building. The goods and the property in which it is transferred in such a case remains the property in shutter

and not in the iron which had been bought for the purpose of manufacture of shutter. The tax that may have been paid on the purchase of iron or

steel to manufacture shutter cannot be regarded as tax that would be payable on the shutter as well.

5. The judgments above would show that whether the goods purchased by the dealer are used in the works contract in the same form and even

after such use, the commodities used lose their character are the test to determine as to whether it is a works contract or sale. For example, in a

case of an agreement for supply of wheat flour, if the dealer purchased the wheat as such and after grinding, supplied the same to the buyer in

powder form, such flour does not lose its character as wheat. In that sense, the word employed in Section 3B, viz., "in the same form or in some

other form" could be applied. However, in a case of manufacture of mosaic tiles, in our opinion, the same yardstick cannot be applied inasmuch as

the goods used by the dealer transformed into a different good, viz., mosaic and the cement, colour, sand and chips lose their individual identity by

that transformation. In that sense, the transaction of a mosaic to the contractor would amount to sale and not works contract. Hence, the Tribunal

was justified in holding so. Accordingly, we find no infirmity in the order of the Tribunal and all the questions of law raised in these revisions are

answered against the assessee. The Tax Case Revisions are dismissed. No costs.