
(1997) 09 MAD CK 0050

In the Madras High Court

Case No : Tax Case No. 334 of 1988 and T.C.M.P. No. 163 of 1988

Nagammal Cotton Mills

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 01-09-1997

Acts Referred:

Central Sales Tax Act, 1956 — Section 8(5)

Citation : (1997) 09 MAD CK 0050

Hon'ble Judges : R. Jayasimha Babu, J;B. Akbar Basha Khadiri, J

Bench : Division Bench

Judgement

Jayasimha Babu, J.—The assessee has come up in appeal against the order of the Joint Commissioner, who suo motu revised the

assessment for the year 1975-76 under the Central Sales Tax Act, to include therein the value of the goods alleged by the assessee to have been

sent to its depot at Bombay by way of consignment sales and which transaction has been found by the Joint Commissioner to be inter-State sales.

2. It is contended by the assessee that even if these transactions are to be treated as inter-State sales, the assessee is entitled to the benefit of the

notification issued by the Governor of Tamil Nadu on March 19, 1976, in exercise of the powers conferred by section 8(5) of the Act, reducing

the rate of tax on sale of cotton yam in the course of inter-State trade or commerce to two per cent as that notification does not mention the date

from which it shall take effect, and has therefore to be, deemed to be effective for the whole of the year, for which tax is payable.

3. We have been taken through the order of the Commissioner. We have also seen the report made by the inter-State Investigation Cell, which

had inspected the premises of the assessee at Madras and that of its agent at

Coimbatore. That report as also the order of the Commissioner sets out the letters received by the assessee from H. N. and Company at Bombay, which company, according to the assessee, is its consignment agent. A perusal of those letters however shows that the goods have been despatched to the said H. N. and Company, the documents being sent through bank, and the payment of the value had been made by the said company. A letter addressed by the assessee's agent at Coimbatore to the H. N. and Company, at Bombay, shows that the so-called consignment agent was required to retire the documents after paying the price. The other letters written by the said H. N. and Company to the assessee show that it was periodically placing orders for varying quantities, and the value of the goods was being paid for by it. There is nothing to show that H. N. and Company, was acting as a stockist or agent of assessee, and that it had not itself purchased the goods.

4. We, therefore, do not see any error in the finding of the Commissioner, that these transactions of the value of Rs. 60,04,830.80 during the year 1975-76 were inter-State sales and was required to be taxed as such.

5. As regards the tax payable on these goods, the assessing officer, adopted the rate of 2 per cent from March 19, 1976 to March 31, 1976, and

6 per cent from April 1, 1975 to March 18, 1976. The Commissioner has confirmed that order of the assessing officer, after setting aside the

order made in appeal by the Appellate Assistant Commissioner, who had allowed the appeal and whose order was the subject-matter of the suo motu revision.

6. Learned counsel for the assessee contended that the notification issued by the Governor of Tamil Nadu on March 19, 1976 does not specify the

date from which it shall come into effect, and therefore, effect is required to be given to that notification from the date of commencement of the

financial year, viz., April 1, 1975 to cover the entire period of twelve months, therefrom, i.e., till March 31, 1976. It is not in dispute that the

notification does not mention the date on which it shall come into force. The relevant part of the notification reads as under :

In exercise of the powers conferred by sub-section (5) of section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), the Governor

of Tamil Nadu, having been satisfied that it is necessary so to do in the public

interest, hereby directs -

(i)

(ii) that the tax payable under the said Act by any dealer having his place of business in the State of Tamil Nadu in respect of the sale by him of

cotton yarn in the course of inter-State trade or commerce, shall be calculated at the lower rate of two per cent.

7. A Constitution Bench of the Supreme Court in the case of Mathra Parshad and Sons v. State of Punjab [1962] 13 STC 180, while considering

the exemption notification issued under the East Punjab General Sales Tax Act, has held that as the tax under the Act was yearly, and was to be

paid on the taxable turnover of a dealer, the exemption, whenever it came in, in the year for which the tax was payable would exempt sales of

those goods throughout the year, unless the Act said that the notification was not to have this effect or the notification fixed the date for the

commencement of the exemption. Hidayatullah, J. (as he then was) who spoke for the majority, observed that the notification must operate either

from the date of the notification or from the date of commencement of the financial year. The tax being made leviable ""on the taxable turnover

every year of a dealer"". The divisions of the year and the taxable turnover into different parts are to make easy the collection of tax, and form part

of the machinery sections. The learned Judge then went on to hold that ""if the tax is yearly and is to be paid on the taxable turnover of a dealer,

then the exemption, whenever it comes in, in the year for which the tax is payable, would exempt sales of those goods throughout the year, unless

the Act said that the notification was not to have this effect, or the notification fixed the date for the commencement of the exemption"".

8. Following that judgment, the High Court of Bombay, in the case of Commissioner of Sales Tax v. Cooper & Co. [1968] 22 STC 111 held that

a notification issued under the Central Sales Tax Act, granting a deduction must be given effect to for the whole of the assessment year, if in that

notification the date on which it shall come into force or being given effect to is not specified"". The court observed that under the Central Sales Tax

Act, the liability or charge imposed on inter-State sales is an yearly liability as it provides in terms that every dealer shall be liable to pay tax on all

sales ""during any year"".

9. This Court in the case of Deputy Commissioner of Commercial Taxes, Tiruchirappalli Division v. C. Saravanan & Co. [1980] 45 STC 94 took

the same view, viz., that notification issued under the Central Sales Tax Act, exempting a commodity from tax shall be effective for the whole year,

if the notification fails to specify the date on which the notification shall take effect.

10. Section 2(k) of the Central Sales Tax Act defines "year" as under :

2(k). "year", in relation to a dealer, means the year applicable in relation to him under the general sales tax law of the appropriate State, and

where there is no such year applicable, the financial year.

"turnover" is defined in section 2(j) as "the aggregate of the sale prices received and receivable by him in respect of sales of any goods in the

course of inter-State trade or commerce made during any prescribed period and determined in accordance with the provisions of this Act and the

Rules made there under".

10. Section 6, which is the charging section provides, inter alia, that "every dealer shall pay tax under this Act on all the sale of goods, other than

electrical energy effected by him in the course of inter-State trade or commerce during any year and from the date notified as the date from which

the levy under that section shall come into force. Section 9(2) of the Act makes the provisions of State Sales Tax Act applicable, inter alia, to the

assessment, reassessment, collection and enforcement of payment of any tax under this Act, in the same manner as done by the same authorities

under the State Act.

11. Having regard to these provisions of the Act, it is clear that the levy of the tax under the Act is on goods sold in the course of the inter-State

trade during the year at the rates prescribed or those applicable for the year unless a contrary intention is disclosed in the notification.

12. In the instant case, the notification issued u/s 8(5) of the Act does not mention the date from which it shall take effect. Having regard to the

scheme of the Act, and the principle laid down by the Constitution Bench of the apex Court, it must be held that this notification reducing the rate

of tax on cotton yarn, though issued at the fag-end of the financial year, the same will have to be regarded as having come into force at the

commencement of the financial year, and applicable for the entire period of

twelve months therefrom. The assessee is, therefore, entitled to the benefit of this notification in respect of inter-State sale of cotton yarn effected by it during the period April 1, 1975 to March 31, 1976.

13. While holding that the disputed turnover is eligible to tax, we further hold that the rate of tax payable on the turnover is at the rate of 2 per cent

in accordance with the notification issued on March 19, 1976, u/s 8(5) of the Act. The appeal, is therefore, allowed in part. The parties to bear

their respective costs. Consequently, no order is necessary in the T. C. M. P.

13. Appeal partly allowed.