

(1980) 12 MAD CK 0029

In the Madras High Court

Case No : T.C. No. 531 of 1977 (Appeal No. 41 of 1977)

New Bharat Confectionery

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 18-12-1980

Acts Referred:

Citation : (1981) 48 STC 140

Hon'ble Judges : V. Ramaswami, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : N. Inbarajan, for C.S. Chandrasekara Sastri, C. Venkataraman, C. Natarajan and S. Chandrasekaran, for the Appellant; K.S. Bhakthavatsalam, Additional Government Pleader, for the Respondent

Judgement

Ramaswami, J.—The assessee in this case is a dealer in confectionery. The turnover in dispute related to the sale of machine parts which

were considered by the assessee as redundant and no longer useful. That the impugned transactions are inter-State sales is not in dispute. The only

question for consideration was whether the turnover is liable to Central sales tax. The Appellate Assistant Commissioner held that the turnover is

not liable to sales tax on the ground that the assessee cannot be held to be carrying on business in selling this redundant capital stock. For that view

the Appellate Assistant Commissioner relied on the decision of the Supreme Court in State of Gujarat Vs. Raipur Manufacturing Company Ltd., .

It was a case decided under the Bombay Sales Tax Act. The Supreme Court held with reference to the definitions in that Act that in the turnover

of a person carrying on business of selling one commodity will not be included the price received by him by sale of another commodity unless he

carries on the business of selling that other commodity.

2. In suo motu revision, after following the prescribed procedure, the Board of Revenue was of the view that in the absence of a definition of

business"" in the Central Sales Tax Act, the definition in the Tamil Nadu General Sales Tax Act can be applied in respect of the transactions falling

under the Central Sales Tax Act. On that reasoning and in view of the decision of the Supreme Court in State of Tamil Nadu Vs. Burmah Shell Oil

Storage and Distributing Co. of India Ltd. and Another, , wherein it was held that all incidental sales are also liable to tax, it held that the disputed

turnover was liable for Central sales tax.

3. The assessment order now in question is in respect of 1974-75. At the relevant time the Central Sales Tax Act did not have any definition of

business"". But u/s 6, every dealer shall be liable to pay tax under the Act on all sales effected by him in the course of inter-State trade or

commerce. The Central Sales Tax Act was amended by Central Act No. 103 of 1976, by inserting a definition of ""business"" and also substituting a

definition of ""dealer"". With reference to the position prevailing prior to the amendment, the Supreme Court in State of Madras Vs. K.C.P. Ltd.,

held that in order to attract liability to sales tax under the Central Sales Tax Act the sale should have been effected by a person who carries on

business in that commodity. That was a case where the assessee-company, whose main business was manufacture and sale of machinery and parts

of machinery and accessories, imported in 1952, two are furnaces for the purpose of having them installed as a part of the plant in its foundry.

When it found those furnaces to be unsuitable for the purpose for which they had been purchased, it sold them to a person in Calcutta. The

question for consideration was whether the turnover relating to this sale should be included in the turnover of inter-State sales of the company. The

Supreme Court held that although the assessee was dealing in the sale of machinery and machinery parts it was not a dealer in the arc furnaces

which were found to be unserviceable and unsuitable and sold by it. It may be mentioned that this decision was given with reference to the

definition u/s 2(b) of the Central Act which read ""dealer" means any person who carries on the business of selling goods, and includes a

Government which carries on such business"". Since u/s 6 only a dealer is liable to pay sales tax on inter-State sales unless it is found that he is a

dealer"" with reference to the sale in question, the sale is not liable to tax. This decision directly covers the point involved in this tax appeal. The

Board of Revenue purported to rely on the decision of the Supreme Court in State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing

Co. of India Ltd. and Another, , which was rendered with reference to the definitions of ""dealer"" and ""business"" in the Tamil Nadu General Sales

Tax Act. In fact, the Supreme Court had pointed out in this decision that before the amendment of the definitions of ""dealer"" and ""business"" by the

amending Act of 1964, the transactions which were incidental or ancillary to trade or commerce where there was no profit-motive were not liable

to tax. That was the situation so far as the Central sales tax is concerned prior to Central Act No. 103 of 1976, which came into force only from

1st April, 1976. This difference has also been pointed out by a Division Bench of this Court in Deputy Commissioner (C.T.) v. South India

Viscose Ltd. [1977]40 S.T.C.442.. In that case, with reference to the Central sales tax assessment prior to the amendment by Central Act No.

103 of 1976, this Court held that the definition in the Tamil Nadu General Sales Tax Act could not be incorporated in the Central Sales Tax Act at

the material time and that the turnover relating to the assessment year 1967-68 could not be taxed. The order of the Board of Revenue, therefore,

could not be sustained. The appeal is accordingly allowed and the order of the Board of Revenue is set aside and that of the Appellate Assistant

Commissioner is restored. There will be no order as to costs.

4. Appeal allowed.