
(1979) 11 MAD CK 0017
In the Madras High Court
Case No : Tax Case (Appeal) No. 250 of 1977

Ponnu Saw Mills	Vs	APPELLANT
The State of Tamil Nadu		RESPONDENT

Date of Decision : 22-11-1979

Acts Referred:

Constitution of India, 1950 — Article 286

Citation : (1980) 45 STC 291

Hon'ble Judges : Sethuraman, J; Balasubrahmanyam, J

Bench : Division Bench

Advocate : C. Natarajan, for the Appellant;

Final Decision : Dismissed

Judgement

Sethuraman, J.—This appeal has been preferred against the order of the Board of Revenue dated 2nd March, 1977. The assessees are

dealers in senna leaves, country drugs, etc. The assessing officer determined the taxable turnover at Rs. 50,967.52 u/s 3(1) of the Madras General

Sales Tax Act, 1959 (hereinafter referred to as the Act). He noticed that the assessees had purchased Nithyakalyani leaves and roots for an

estimated value of Rs. 88,943.00 from agriculturists and exported the goods to foreign countries. He subjected this turnover to tax u/s 7-A of the

Act. On appeal, the Appellate Assistant Commissioner, Tirunelveli, relying on the decision of this Court in M.K. Kandaswami v. State of Tamil

Nadu [1971] 28 S.T.C. 227, cancelled the assessment u/s 7-A of the Act. This decision was reversed by the Supreme Court and the Supreme

Court's judgment was reported as State of Tamil Nadu v. M.K. Kandaswami [1975] 36 S.T.C. 191. The Board took suo motu revision

proceedings after the judgment of the Supreme Court was pronounced and after

giving the assessee the necessary opportunity to show cause why

the turnover should not be taxed, brought to tax the turnover u/s 7-A(I)(c) of the Act. It is this order of the Board that is now the subject-matter of

the present appeal.

2. Section 7-A of the Act, in so far as it is material, runs as follows:

7-A. Levy of purchase tax. -- (1) Every dealer who in the course of his business purchases from a registered dealer or from any other person, any

goods (the sale or purchase of which is liable to tax under this Act) in circumstances in which no tax is payable u/s 3, 4 or 5, as the case may be,

and either, --

(a) consumes such goods in the manufacture of other goods for sale or otherwise; or

(b) disposes of such goods in any manner other than by way of sale in the State; or

(c) despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce, shall

pay tax on the turnover relating to the purchase aforesaid at the rate mentioned in Section 3, 4 or 5, as the case may be, whatever be the quantum

of such turnover in a year.

3. The proviso has been omitted as it is not relevant in the present context. In the present case, as seen from the order of the Board, Clause (c) of

subsection (1) of Section 7-A of the Act has been applied. Under that provision, if the goods were despatched to a place outside the State except

as a direct result of sale or purchase in the course of inter-State trade or commerce, then the assessee would be liable to purchase tax. There is

yet another condition imposed u/s 7-A of the Act, the said condition being the purchase of any goods in circumstances in which no tax is payable

u/s 3, 4 or 5 of the Act. In the present case, the purchases having been effected from agriculturists, there is no tax liability in respect of the sales by

the said agriculturists. Therefore, the first condition was fulfilled and the second condition, namely, despatch of the goods to a place outside India

(sic) except as a direct result of sale or purchase in the course of inter-State trade or commerce, has also been, in the Board's view, fulfilled. The

point in dispute is whether this order of the Board is correct.

4. The learned counsel for the assesseees contended that Clause (b) of Sub-section (1) of Section 7-A of the Act deals with disposal of goods

within the territory of the State and Clause (c) of Sub-section (1) of Section 7-A of the Act deals with despatches of goods to another State within

the Union of India. If the goods were despatched to a place outside the country, then, according to the learned counsel for the assesseees, Clause

(c) would not be attracted and, therefore, one of the conditions of Section 7-A would not be fulfilled with the result there could be no purchase

tax. We are unable to agree with this submission.

5. Clause (c) of Sub-section (1) of Section 7-A of the Act contemplates despatches of the goods to a place outside the State. So long as the

goods leave the boundaries of the State, then whatever be their destination, they will fall within Clause (c). Where the sale or purchase takes place

in the course of inter-State trade or commerce, then there could be no purchase tax. That is a specific category excluded from purchase tax levy.

The export sales as here have not been so excluded.

6. The learned counsel for the assesseees drew our attention to a decision of the Supreme Court in *Burmah Shell Co. Ltd. v. Commercial Tax*

Officer [1960] 11 S.T.C. 764. In that case, the assesseees dealt with petroleum and petroleum products at Calcutta. There was a supply depot at

Dum Dum Airport from which aviation spirit was sold and delivered to aircraft proceeding abroad. The question was whether those supplies to the

aircraft which proceeded to foreign countries were liable to sales tax under the Bengal Motor Spirit Sales Taxation Act, 1941. The appellant-

assesseees contended that such sales were made in the course of export of such aviation spirit out of the territory of India, that they took place

outside the State of West Bengal, that inasmuch as aviation spirit was delivered for consumption outside West Bengal, the sales could not fall

within the explanation to Clause (1)(a) of Article 286 (as it stood at the relevant point of time) and that unless they could be said to become

explanation sales", the power to tax did not exist. The Supreme Court held that in order to exclude the powers of taxation of the State of West

Bengal, the assesseees must be able to point out some other State where the goods could be said to have been delivered as a direct result of the

sale for the purpose of consumption in that other State and, as the appellant-

assessee had not done so, they could not invoke the explanation. The aviation spirit loaded on board an aircraft for consumption, though taken out of India, was not exported since it had no destination, where it could be said to be imported. As the sale did not satisfy this test, it was held that it could not be said that the sale was in the course of export. It was also held that as all the elements of sale including delivery and payment of price took place within the State of West Bengal, the sales were completed within the territory of that State and, therefore, were liable to tax under the Bengal Motor Spirit Sales Taxation Act, 1941. In the course of the judgment, reference was made to Section 22(1) of the West Bengal Act, as it was introduced into the statute by the Adaptation of Laws Order, 1950. Under that provision, the West Bengal Act was not to be construed to impose or authorise the imposition of a tax on the sale or purchase of motor spirit where the sale or purchase took place outside the State of West Bengal or where the sale or purchase took place in the course of the import of such motor spirit into, or export of such motor spirit out of the territory of India. For this purpose, the explanation to Clause (1) of Article 286 of the Constitution of India was specifically made applicable. The explanation to Sub-clause (a) of Clause (1) of Article 286 ran as follows:

Explanation. -- For the purposes of Sub-clause (a), a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State.

7. The Supreme Court held that the explanation was not applicable unless there were more States than one involved and that the explanation determined which State out of those connected with the transaction of sale can tax it.

8. This decision has absolutely no relevance to the problem now before us. As seen from the explanation, it contemplated two States both falling within the territory of India. But, in the present case, Clause (c) of Sub-section (1) of Section 7-A of the Act contemplates only one State. The expression used is "despatches them to a place outside the State". The word "State" has been defined under the Act as meaning the State of Tamil

Nadu. Therefore, as soon as it is found that there was a despatch to a place outside the State of Tamil Nadu, Clause (c) of Sub-section (1) of Section 7-A of the Act would be satisfied. We have already seen that the exception is only in favour of a transaction in the course of inter-State trade or commerce. This is not such a sale. The result is that the present transaction would fall within the scope of Section 7-A of the Act and, therefore, it was rightly brought to tax under the said provision. We may make it clear that the present judgment will not in any manner affect the question of the liability to tax or otherwise with reference to the amendment made by Central Act 103 of 1976. The appeal is dismissed with costs, counsel's fee Rs. 250.