

(1982) 11 MAD CK 0040

In the Madras High Court

Case No : T.C. No. 1291 of 1977 (Revision No. 296 of 1977)

Premier Electro Mechanical Fabricators

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 12-11-1982

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 2

Citation : (1985) 153 ITR 11 : (1984) 55 STC 371

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

Bench : Division Bench

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

Judgement

Balasubrahmanyam, J.—The petitioner in this case is a proprietary concern run under the name of Premier Electro Mechanical Fabricators.

Part of the assets of this business represented items of machinery. On 29th June, 1975, and 31st October, 1975, the petitioner sold items of

machinery for Rs. 90,000 and 86,000 respectively to a private limited company called Premier Fabricators Pvt. Ltd., Madras. The aggregate sale

value of machinery in the sum of Rs. 1,76,000 was considered by the assessing authority, who brought to assessment Rs. 1,63,000 thereof as

taxable sales turnover. The petitioner objected to this assessment in appeal. The petitioner contended that no sale at all was involved in the transfer

of the machinery to the private limited company, because the consideration received by the petitioner was not cash, but only the equity shares of

that very company. The receipt of fully-paid shares as consideration, it was contended, tended to make the transaction not a sale, but only a barter

or exchange. The Tribunal, however, rejected this contention, applying the definition of "sale" u/s 2(n) of the Act, which included transfer of property for valuable consideration.

2. We agree with the Tribunal's determination. The idea of exchange or barter would emerge where the owner of a property transfers it to another

person, in consideration of that other person parting with his property in favour of the former. In this case, there are no mutual cross-transfers of

properties belonging to each of the two parties. It is trite law that where fully-paid shares are allotted to a person by a company, in consideration of

payment of the value of goods sold to them, the title to the shares becomes vested in the allottee, but allotment of share is not per se a transfer by

the company at all, much less a transfer of the company's property or assets. Equity shares or any other kind of shares in a company are really

part of the share capital of the company. In that sense, they are liabilities of the company and not assets held by the company. Moreover, the

process of allotment of fully-paid shares in consideration of payment of the value of goods or services cannot be regarded as "transfer" of property.

All that it involves is the admission of the person concerned as a member of the company with all the rights and obligations that it involves. In this

sense, therefore, there is hardly any scope for treating the shares allotted as being given in exchange for the properties transferred by the individual.

3. There is yet another way of looking at the transactions in this case, particularly having regard to the way in which the transaction was put

through. The parties first agreed about the sale, and followed up that bargain by further agreeing that the liability of the company for payment of the

sale consideration has to be discharged by the issue to the petitioner of fully-paid shares in the company. The resolutions of the company as well as

the sale deeds in this case mention clearly that the consideration payable in respect of the transfer of the items of machinery to the company shall be

discharged by the allotment of fully-paid shares in the company. The sale in each case was already a completed transaction rendering the company

liable for the payment of the price. And, in that situation, the company resolved to discharge the liability, not by payment in cash, but by allotment

of fully-paid shares of the company. In this situation, it is easy to discern two distinct and separate transactions, although they are "intertwined and

almost undistinguishable"" in the resolutions and in the sale deeds. The two transactions are : (i) the sale of the machinery at a stated price and (ii)

the discharge of the obligation for payment of the price by the company by the medium of allotment of its own shares.

4. In Commissioner of Income Tax, Gujarat Vs. B.M. Kharwar, , the Supreme Court laid down the legal position in matters of this kind as follows

:

A person carrying on business may agree with a company that the assets belonging to him shall be transferred to the company for a certain money

consideration and that in satisfaction of the liability to pay that money consideration, shares of a certain face value shall be allotted to him. In that

case there are in truth two transactions - one a transaction of sale and the other a contract under which the shares are allotted in satisfaction of the

liability to pay the price.

5. From this decision it is clear that there is a regular sale in such cases, even though no cash consideration actually passes from the company to the transferor.

6. The learned counsel for the petitioner referred to reported cases which had put a narrow construction on the expression ""valuable consideration

occurring in the definition of the expression ""sale"" employed in the sales tax enactments. In the Tamil Nadu General Sales Tax Act, 1959, the

expression ""sale"" is defined as every transfer of property in goods by one person to another in the course of business ""for cash or for deferred

payment or for other valuable consideration"". The learned counsel's point was that the expression ""valuable consideration"", occurring in the

definition cannot be given a wide meaning so as to include the allotment of fully-paid shares in consideration of passing of title in the goods as in the

present case. The learned counsel referred to a decision of the Supreme Court in Devi Das Gopal Krishnan and Others Vs. State of Punjab and

Others, . In that case, the Supreme Court did not lay down that if there is a transfer of goods for valuable consideration, other than cash, the

transaction cannot be regarded as sale. What the Supreme Court meant to lay down was that a valuable consideration should be something akin to

cash payment or deferred payment in order to make the transfer a sale. In this case, the transfer of machinery by the assessee to the company, as

well as the allotment of shares by the company to the assessee, were recorded in the company's books, by means of appropriate entries in the company's assets account and the share capital account. The consideration thus was shown as a cancellation of one debt by another : a debt by the company for the value of the machinery purchased and an obligation of the petitioner to subscribe to the face-value of the equity shares. In the face of these entries in the accounts cancelling two interconnected or interdependent debts, the consideration must be held as equivalent, or akin, to cash and cannot be treated as a mere exchange or barter. We are therefore convinced that even on the law laid down by the Supreme Court in *Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others*, the Tribunal's decision in this case must be held as correct.

7. The revision petition fails and is accordingly dismissed. The petitioner will pay the costs of the State Government. Counsel's fee Rs. 250.