
(1972) 12 MAD CK 0006

In the Madras High Court

Case No : Writ Petitions No's. 3796 to 3798 of 1969

Rallis India Ltd.

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 21-12-1972

Acts Referred:

Central Sales Tax Act, 1956 — Section 15, 8
Constitution of India, 1950 — Article 286

Citation : (1973) ILR (Mad) 297 : (1974) 33 STC 251

Hon'ble Judges : V. Ramaswami, J;Ramanujam, J

Bench : Division Bench

Advocate : C. Natarajan, for the Appellant; K. Venkataswami, First Assistant Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ramanujam, J.—The petitioner in all these cases is Messrs. Rallis India Limited, hereinafter referred to as the assessee. The assessee is a

dealer in cotton, fertilisers, electrical goods, tanning materials, etc. For the assessment years 1964-65, 1965-66 and 1967-68, it was assessed

under the Madras General Sales Tax Act, 1959, hereinafter called the State Act, inter alia, on its last purchase of cotton within the State. The

assessee objected to the same contending that cotton being declared goods, when it is sold in inter-State trade or commerce the tax levied and

collected under the State Act has to be refunded as per Section 4-A of the State Act and that, therefore, in respect of cotton which has been sold

inter-State by the assessee the tax on last purchases under the State Act could not be levied at all. This contention was overruled by the assessing

authorities and the assessee thereafter filed applications in form A-4 for refund of the tax paid on the turnover of local purchases of cotton which

had subsequently been sold inter-State. The amounts of tax paid by the assessee u/s 4 of the State Act at the point of last purchase of cotton for

1964-65, 1965-66 and 1967-68 were Rs. 22,739.17, Rs. 8,650.76 and Rs. 24,703.88 respectively, and these are the amounts in respect of

which refunds were claimed by the assessee in the applications in form A-4. As the assessing authority had not passed any orders on the said

applications for refund, the assessee has come up to this court seeking directions in the nature of mandamus to refund the amounts in dispute.

2. The respondent in its counter-affidavit has stated that as the assessee has not complied with Rule 23 of the Madras General Sales Tax Rules,

1959, in that it has not paid the Central sales tax on its inter-State sales of cotton, he has not passed any orders on the petitions for refund. The

question is whether the respondent is justified in not granting the refund.

3. According to the assessee, Rule 23 is not only ultra vires the Madras General Sales Tax Act but also offends Article 286(3) of the Constitution

read with Section 15(b) of the Central Sales Tax Act, hereinafter called the Central Act. The contention of the assessee is that u/s 15(b) of the

Central Act, where tax has been levied under the State Act on the sale or purchase of any declared goods and such goods are sold in the course

of inter-State trade or commerce, the tax levied under the State Act should be refunded to such person in such manner and subject to such

conditions as may be prescribed by the law in force in that State, that, therefore, the claim for refund is only conditioned by the fact that the goods

had been sold in the course of inter-State trade and commerce, that the said Section 15(b) does not impose any further condition that the claimant

should have been subject to the levy of tax under the Central Act and that, therefore, Rule 23(1) requiring a dealer who claims refund to pay the

tax under the Central Sales Tax Act before applying for refund is invalid being ultra vires of the rule-making authority. The learned counsel for the

assessee points out that in this case the inter-State sales of the assessee have not suffered Central sales tax in view of an exemption granted by the

State Government in G. O. No. 3602, Revenue, dated 28th December, 1963, u/s 8(5) of the Central Act exempting inter-State sales from levy of

tax for the relevant period and, therefore, the payment of Central sales tax cannot be insisted for granting him the refund. It is also urged by the

learned counsel that the prescription of time-limit for the submission of the refund applications is invalid being ultra vires of the rule-making

authority, as neither Section 15 of the Central Act nor Section 4 of the State Act empower a prescription of the rule of limitation regarding claims

for refund and relies on the decision of Venkatadri, J., in P. Thirumurthi Chettiar v. State of Madras [1968] 21 S.T.C. 489 and the decision of the

Mysore High Court in Mallick Hashim and Company, Bijapur v. Commercial Tax Officer, Bijapur 17 L.R. 298. But in this case the assessee's

applications for refund had not been rejected on the ground of limitation provided for in the said Rule 23(1). It is seen from the counter-affidavit

filed by the respondent that the refunds have not been ordered because the assessee had not paid the tax under the Central Act on its inter-State

sales of the same goods. We have, therefore, to consider the only question as to whether the assessee's right to get refund u/s 15(b) can be made

subject to a condition that the Central sales tax should be paid on the same goods before claiming the refund of tax paid under the State Act. The

learned counsel has referred to the decisions of the Mysore High Court in Munshi Abdul Rahiman and Brothers v. Commercial Tax Officer, I

Circle, Hubli [1967] 20 S.T.C. 539 and of the Andhra Pradesh High Court in Rafeeq Ahmed and Co. v. State of Andhra Pradesh [1969] 24

S.T.C. 430. In Munshi Abdul Rahiman and Brothers v. Commercial Tax Officer, I Circle, Hubli [1967] 20 S.T.C. 539, it has been held that u/s

15(b) of the Central Act the right to receive a refund of the State tax, if any, paid in respect of declared goods is acquired the moment the said

goods are sold in the course of inter-State trade, that actual payment of tax under the Central Act is neither specifically mentioned in the Section

nor is it capable of being implied in the language of the section and that, therefore, Rule 39-A(I) of the Mysore Sales Tax Rules providing that the

assessee must have paid tax under the Central Act in respect of the same goods before he claims a refund imposes a condition precedent to the

acquisition of the right to refund itself and that the imposition of such a condition precedent is not contemplated by Section 15(b) and that,

therefore, the said Rule 39-A(I) is ineffective and inoperative. The relevant observations of the court are these:

We have no doubt that the one and the only condition for the refund of the State tax is that the goods should have been sold in the course of inter-

State trade. To say further, as Sub-rule (1) of the impugned Rule 39-A says, that the assessee claiming refund must have paid tax under the

Central Sales Tax Act in respect of such sale, is to add a further condition precedent to the acquisition of right to refund itself. Such a result cannot

be achieved in exercise of the powers given to prescribe conditions subject to which the refund may be claimed. Such conditions to be valid, must

be conditions which do not add to the condition precedent to the acquisition of right to refund, but may deal with such matters as form of

application, time of application, mode of proof, etc.

4. Rafeeq Ahmed and Company v. State of Andhra Pradesh [1969] 24 S.T.C. 430 also took the same view that u/s 15(b) of the Central Act the

right to refund arises the moment the goods purchased by a tanner or last purchaser are sold in the course of inter-State trade, and that the

language of the subsection does not warrant the imposition of any further condition for getting a refund of the tax levied under the State Act.

Relying on the above decisions the learned counsel for the assessee contends that the assessee's right to get refunds will not depend on his

payment of Central sales tax on the inter-State sales of the same goods. We consider it unnecessary to go into the correctness or otherwise of the

views expressed in the above cases in view of certain amendments made to the Central Act. We find from Central Act 61 of 1972 that Section

15(b) has been amended with retrospective effect from 1st October, 1958, and the amended Sub-section reads as follows:

Where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the

course of inter-State trade or commerce, and tax has been paid under this Act in respect of the sale of such goods in the course of inter-State

trade or commerce, the tax levied under such law shall be reimbursed to the person making such sale in the course of inter-State trade or

commerce.

5. As it is the above amended section which has to govern, the petitioner's contention that the assessee is entitled to get a refund of the local tax

paid as soon as the goods are sold inter-State is no longer tenable as the amended section specifically imposes a further condition which was not

there before that the tax so levied under the Central Act should have already

been paid before the right to get a refund accrues. The amended provision squarely meets the contention of the petitioner raised in these petitions. The effect of this amendment is to supersede the decisions referred to above. The learned counsel for the assessee also concedes that as per the amended provision in Section 15(b) the assessee is not entitled to the refund of the local taxes paid in view of the fact that it has not paid the Central sales tax on its inter-State sales.

6. The result is the writ petitions are dismissed, but in the circumstances, no costs.