

(1992) 06 MAD CK 0016

In the Madras High Court

Case No : T.C. No. 229 of 1983 (Appeal No. 32 of 1983)

Shaw Wallace and Company

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 29-06-1992

Acts Referred:

Central Sales Tax Act, 1956 — Section 2

Tamil Nadu General Sales Tax Act, 1959 — Section 34

Citation : (1992) 06 MAD CK 0016

Hon'ble Judges : Raju, J;K.S. Bakthavatsalam, J

Bench : Division Bench

Judgement

Bakthavatsalam, J.—The appellant before us was assessed on a total and taxable turnover of Rs. 2,98,96,951.83 and Rs. 97,61,967.80

respectively for the assessment year 1973-74 under the Central Sales Tax Act, 1956, by the Commercial Tax Officer, Central Assessment Circle

IV, Madras, by an order of assessment, dated November 14, 1977. The assessing officer had allowed the exemption on a turnover of Rs.

2,96,234.95 relating to freight charges. Aggrieved by the said order, the assessee went on appeal to the Appellate Assistant Commissioner and the

Appellate Assistant Commissioner by order dated November 29, 1988, remanded the case to the assessing officer on other grounds. The Joint

Commissioner of Commercial Taxes, exercising his power of revision u/s 34 of the Tamil Nadu General Sales Tax Act, 1959, issued a notice on

August 11, 1982, bringing into the net of taxation a taxable turnover of Rs. 2,96,234.95, the turnover on which exemption was granted by the

assessing officer originally. After considering the objections of the assessee, the Joint Commissioner of Commercial Taxes by the order impugned

before us, brought the turnover of Rs. 2,96,234.95 into the net of taxation on the ground that freight charges cannot be exempt from tax on the facts and circumstances of the case.

2. Mr. Inbarajan, learned counsel for the appellant though raised a point of law that the Joint Commissioner could not have touched the order of the assessing authority, since the assessment was the subject-matter of the appeal before the Appellate Assistant Commissioner, however, gave up that point when this Court pointed out that the Appellate Assistant Commissioner remanded the matter to the assessing officer and that the grievance of the assessee before the appellate authority was only against some other disputed turnover and not on the turnover in question on which the assessee could not have preferred an appeal since the assessee was allowed relief in respect thereof before the assessing officer.

3. However, Mr. Inbarajan, learned counsel for the appellants contended that on facts the appellant before us is entitled to exemption, as granted by the assessing officer, as the exemption claimed by the appellant comes squarely within the provisions of section 2(h) of the Central Sales Tax Act, 1956. Learned counsel for the appellant further pointed out that no finding has been given by the revisional authority, especially when the authority is exercising revisional power and bringing the turnover only under the net of taxation which was exempted by the original authority.

4. We have given our deep and anxious consideration to the arguments of learned counsel for the appellant. First of all, we are not inclined to agree with the learned counsel for the appellant since at the time of hearing of the appeal, the assessee did not produce the price lists and invoices in respect of other goods and it was also not proved that freight charges are shown separately in the invoices. Further, from the records available, it is clear that the appellant has collected taxes on the freight charges and that the assessee had charged an all-inclusive price and allowed reduction under the head ""freight"". This, in our view will not satisfy the conditions prescribed u/s 2(h) of the Central Sales Tax Act, 1956. We are of the opinion that the appellant cannot collect tax on the freight charges on the facts and circumstances of the case because when the price of the goods sold by the appellant is all-inclusive price including the cost of freight, then the freight forms part of the sale price and the same is liable to tax.

While considering a similar case, which arose under the Tamil Nadu General Sales Tax Act, the apex Court of the land in the decision reported in

Tungabhadra Industries Ltd. v. Commercial Tax Officer [1960] 11 STC 827 has held that in order to claim the benefit of exemption the freight

should (i) have been specified and charged for by the dealer separately and (ii) the same should not have been included in the prices of the goods

sold. In the case before us, the second condition as stated above has not been complied with, which is one of the important conditions, which also

finds a place u/s 2(h) of the Central Sales Tax Act, 1956 and which also deals elaborately with the "sale price".

5. In view of the conclusion reached by the apex Court in the decision referred to supra (Tungabhadra Industries Ltd. v. Commercial Tax Officer

[1960] 11 STC 827) the appellant before us is not entitled to exemption as claimed. The order of the Joint Commissioner passed in the revision

cannot be assailed. The above tax case therefore fails and the same shall stand dismissed. No costs.

6. Petition dismissed.