

(1991) 07 MAD CK 0038

In the Madras High Court

Case No : Tax Case No"s. 433 and 434 of 1982 (Revision No"s. 108 and 109 of 1982)

Shaw Wallace and Company Limited

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 30-07-1991

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 16, 3(1)

Citation : (1991) 07 MAD CK 0038

Hon'ble Judges : Kanakaraj, J;A.S. Anand, J

Bench : Division Bench

Advocate : N. Inbarajan, for the Appellant; Mrs. Chitra Venkataraman, Government Advocate, for the Respondent

Judgement

1. The assessee in both the revision cases are the same. While T.C. No. 433 of 1982 relates to the assessment year 1976-77, T.C. No. 434 of

1982 relates to the assessment year 1974-75. They arise out of a common order of the Tribunal. For the year 1976-77 the total and taxable

turnover of the petitioners were determined at Rs. 17,97,95,299.39 and Rs. 3,04,74,530.71, respectively.

The dispute in this assessment year relates to packing charges to the tune of Rs. 12,48,386.46 taxable at 25 per cent and freight rebate to the tune

of Rs. 6,11,679.31 taxable at 3 1/2 per cent. For the assessment year 1974-75 the taxable turnover was taken as Rs. 2,86,91,536.07 by an

order dated October 13, 1977. By a subsequent order dated March 31, 1980, exercising power u/s 16 of the Tamil Nadu General Sales Tax Act,

1959, a turnover of Rs. 10,34,806.74 taxable at 25 per cent and a turnover of Rs. 7,69,198.93 taxable at 3 1/2 per cent were sought to be taxed,

which amounts had been earlier exempted. These amounts relate to the packing charges and freight rebate respectively. The Appellate Assistant Commissioner held that the packing charges are not liable for exemption under rule 6(cc) of the Tamil Nadu General Sales Tax Rules, 1959 and, therefore, the assessee was not entitled to deduct the cost of the packing materials from the taxable turnover. However for a proper assessment of the turnover he found it was necessary to ascertain the respective values of the containers, viz., glass bottles and wooden crates. For the purpose of ascertaining the correct turnovers, the Appellate Assistant Commissioner, found it necessary to ascertain the respective values of the glass bottles and the wooden crates. He, therefore, directed a remand back to the assessing authority for passing a fresh order. Before the Tribunal the dispute relating to the freight rebate taxable at 3 1/2 per cent was given up by the petitioners. Therefore, the Tribunal discussed the issue only with reference to the packing charges taxable at 25 per cent.

2. Both before the Tribunal and before us the argument is that packing charges cannot be included in the taxable turnover and at any rate the packing materials could not be taxed at the same rate as the contents namely, liquor. It is conceded that the judgment of the Full Bench in State of Tamil Nadu v. V. V. Vanniaperumal & Co. [1990] 76 STC 203 will govern the first part of the issue, namely, that no deduction for the packing charges can be made because the bargain of sale was for the goods in containers. The argument based on rule 6(cc) of the Tamil Nadu General Sales Tax Rules, therefore, fails. The composite goods, namely, contents as well as the containers were taxable and the entire turnover has to be taken into consideration. Mr. Inbarajan, learned counsel for the petitioners seeks to contend that a passage in Raj Sheel v. State of Andhra Pradesh [1989] 74 STC 379 will come to the help of the assessee for claiming relief. The passage relied on is as follows :

It is, therefore, perfectly plain that the issue as to whether the packing material has been sold or merely transferred without consideration depends on the contract between the parties. The fact that the packing is of insignificant value in relation to the value of the contents may imply that there was no intention to sell the packing, but where any packing material is of significant value it may imply an intention to sell the packing material. In a

case where the packing material is an independent commodity and the packing material as well as the contents are sold independently, the packing material is liable to tax on its own footing.

But the very next sentence and the conditions imposed by the Supreme Court for holding that a transaction for sale of packing material is an

independent transaction goes against the assessee. The first condition envisaged by the apex Court is that for claiming the transaction as an

independent transaction, the packing materials should have been separately classified in the Schedule. What Mr. Inbarajan, contends is that the

packing materials are taxable as multi-point goods u/s 3(1) of the Act and, therefore, it must be deemed separately classified. Certainly this

argument cannot be accepted because the apex Court points out that the packing materials should have been separately classified in the Schedule.

The dictum of the apex Court cannot apply to the facts of this case. Further it is seen from the invoices that the description of the goods, is always

in terms of the number of cases, that is in the form of crates. Therefore, the contention that the sale of packing materials forms part of an

independent commodity cannot be accepted. Tax revision cases therefore, fail and they are accordingly dismissed.

3. Petitions dismissed.