
(1971) 08 MAD CK 0029

In the Madras High Court

Case No : Writ Petition No. 2690 of 1966

Sivaji Films Private Limited

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 02-08-1971

Acts Referred:

Citation : (1973) 30 STC 66

Hon'ble Judges : Ramaprasada Rao, J

Bench : Single Bench

Advocate : R. Krishnamoorthy, D. Raju and A.R. Lakshmanan, for the Appellant;
K. Venkataswami, First Assistant Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Ramaprasada Rao, J.—The petitioner, an incorporated company under the Companies Act obtained certain licences under the Export

Promotion Scheme of the Government of India for the import of raw stock of films and other materials and for this purpose they obtained licences

from the Joint Chief Controller of Imports and Exports. The intention behind the import was that they should use such imported films themselves in

the course of their film production. While issuing the licence, the Controller of Imports imposed several restrictions, one amongst which is that the

release of the stock so imported to a stranger ought not to be made unless otherwise ordered by the licensing authority. It is practically conceded

that the imported raw stock is controlled by the Government both in the manner of import and then at the stage of consumption by way of release

orders issued for the purpose by the appropriate authority. In fact, the petitioner-company was to furnish periodical reports of consumption of raw

films to the Controller of Imports. In the year 1965-66, the petitioner imported various rolls of stock of raw films; but as the petitioner could not consume the same and utilise the entire stock, the Controller of Imports on information gathered from the petitioner and on an application for the purpose made by Sri Vijayalakshmi Pictures, re-allotted a part of the imported stock on a no-profit-no-loss basis to the said Vijayalakshmi Pictures. The allotment orders made by the Controller of Imports are in the record.

2. While so, the respondent issued a notice dated 15th October, 1966, calling upon the company to produce its accounts for the assessment years 1965-66 and 1966-67 for the purpose of check. The petitioner enquired in the office of the respondent and it was informed that certain alleged sales made by the petitioner-company to Vijayalakshmi Pictures were assessable to sales tax. The so-called sales are supplies made by the petitioner to Vijayalakshmi Pictures, as directed by the Import Controller. Apprehending further action on the part of the revenue, the petitioner has come up to this court for the issue of a writ of certiorari to quash the order calling upon the petitioner to submit accounts as if it was a dealer in raw films.

3. It is unnecessary for me to go further into the factual situation, which is not disputed, for in similar matters this court as well as the Supreme Court held that persons placed in the position of the petitioner and the dealings similarly made by them under the same circumstances as above, could not be characterised as sales which would attract the Sales Tax Act. In *New India Sugar Mills Ltd. Vs. Commissioner of Sales Tax, Bihar*, the Supreme Court had to consider whether despatch of sugar to the State of Madras under orders of the Sugar Controller made under the Sugar and Sugar Products Control Order, 1946, was liable to sales tax under the relative Sales Tax Act of Bihar. The Supreme Court held that those despatches of sugar by the assessee pursuant to the directions of the Sugar Controller were not the result of any contract of sale and, therefore, there was no sale and the assessee was not liable to pay sales tax on the amount received by them from the State of Madras for sugar supplied. In an almost identical situation, a Bench of this High Court had expressed the same view in *S.T.C. No. 2Q7 of 1968* [*The State of Madras*

represented by the Deputy Commissioner (C.T.), Madras v. Pakshiraja Studios (P.) Ltd.}. Veeraswami, J. (as he then was) after setting out the

facts held that even though the transaction may amount to a sale as is popularly understood, it did not constitute the petitioner a dealer so as to

attract tax. In the instant case, all imports were made subject to certain restrictions and conditions and the surplus stock in the hands of the

petitioner was released at the instance of the Controller of Imports and at his behest and direction. In such circumstances, the petitioner cannot be

called a dealer as the word requires some more incidents and aspects to be satisfied before he could be called upon to answer a charge of non-

payment of sales tax as a dealer. Even otherwise, I am of the view that in a case like this the essential elements of sale, namely, a contract of sale, a

price which the vendor should stipulate for himself without external directives and a consideration in the sense that such sale is normally for

purposes of making a profit, are all absent. Even in this view also, the petitioner should succeed.

4. Though the petitioner is venturesome as to come to this court well in advance, probably because of the apprehensions entertained in his mind,

yet the relief sought ought not to be negatived because he is justified in his apprehensions. The petitioner not being a dealer and the transactions not

being sales, the notice challenged in this writ petition ought not to have been issued and no further proceedings pursuant to the same are warranted

in the eye of law. Hence, the rule nisi is made absolute. Writ petition allowed. No costs.