
(1977) 04 MAD CK 0001

In the Madras High Court

Case No : T.C. No's. 294 and 295 of 1974

Spheroidal Casting Ltd.

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 21-04-1977

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 16, 17, 2(d), 38

Citation : (1978) 7 CTR 19(2)

Hon'ble Judges : Sethuramn, J

Bench : Single Bench

Judgement

Sethuramn, J.—In these petitions filed under S. 38 of the Tamil Nadu General Sales Tax Act, there are two point in dispute. The first relates

to a sum of Rs. 859-27P. The said sum represents the sale of certain miscellaneous items of empties and discarded materials. There materials were

acquired by the assessee in the course of its business. However, was not in the course of business. However, the Sales Tax appellate Tribunal held

that in view of explanation to S. 2(d), even such transactions when they were incidental or ancillary or in connection with the business were taxable

and, in support of its decision, relied on the pronouncement of the Supreme Court in State of Tamil Nadu vs. Burmah Shell Co., Ltd. The Tribunal,

therefore, sustained the addition as made by the Sales Tax Authorities. It is this conclusion which is now challenged.

2. In view of the definition in S. 2(d) read with the explanation thereof, it is clear that even the transactions incidental or ancillary to the business

carried on by the assessee will be taxable. The test as to whether the assessee is carrying on business in the particular items could no longer hold

the field. The conclusions of the Tribunal based on the statute as well as on the

decision of the Supreme Court is, therefore, correct. We do not find any error so as to justify any interference on our part with reference to this conclusion.

3. The next point in dispute relates to a sum of Rs. 28,451/- for the assessment year 1970-71. In the revision petition relating to the assessment year 1971-72, which is also before us, the turnover involved is Rs. 29,553-10p. These turnovers relate to the supplies of castings which are said to be used as parts of Mould Board Plough. The assessee claimed these items of turnover were not liable to be taxed in view of a notification under S. 17 of the Act, dated 18-3-1970. The Sales Tax Authorities did not accept this claim based on the notification and the Tribunal also confirmed the conclusion of the Sales Tax Authorities. The assessee seeks to challenge this part of the order of the Tribunal also.

4. The notification, in so far as it is material, runs as follows :

In exercise of the powers conferred by S. 17 of the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act, 1 of 1959), the Governor of

Tamil Nadu hereby makes with effect on and from the 1st April, 1970.

(i) the exemption in respect of the tax payable by any dealer under the said Act, on the sales of agricultural implements (other than tractors, bulldozers and tillers);

5. The claim of the assessee is that these castings, which are used as parts of Mould Board Plough, come within the scope of this notification as parts of agricultural implements. The learned Additional Government Pleader submitted that these Moulds themselves did not come within the scope of agricultural implements and that the agricultural implements contemplated by such notification would only be those implements which are liable to be used as such and not parts thereof.

6. We consider that the contentions advanced on behalf of the assessee deserves to be accepted. The Government has granted exemption of the sales agricultural implements. The word ""implements"" means tools or instruments. Parts of tools and parts of instruments would also be implements.

An implement cannot be taken as meaning only a whole piece. Otherwise, the notifications would have been more specific. In fact, the Tractors

and Farm Equipments Limited, a Company which produces tractors, had addressed a letter to the Commissioner of Commercial Taxes enquiring

as to whether the concession would be available for parts of the agricultural implements. By his letter dated 30-6-1970, the Commissioner stated,

The petitioners are informed that what is applicable to the main agricultural implements will equally apply to the parts also and as such, the parts of

agricultural implements referred to the Boards ref. A.2.1399/70 dated 12-5-1970 are also eligible for exemption". This letter appears to us to

bring out what was intended in the notification granting exemption mentioned already. In fact the amended notification now in force has made this

clear. We are therefore, satisfied that the assessee's claim regarding these two items of turnover, namely, Rs. 28,451/- for the assessment year

1970-71 and Rs. 29,553-10P. for the assessment year 1971-72 deserves to be accepted and we, therefore, set aside the Tribunal's order on this

point and hold that these are two items of turnover will not be taxed in the hands of the assessee.

7. The learned counsel for the assessee raised another contention peculiar to the assessment year 1970-71 and that was that the assessment had

already been completed in which such exemption was granted. According to the learned counsel, the assessing authority merely issued a

notice without referring to any provision showing that he proposed to revise the assessment. According to the learned counsel, this notice without

reference to S. 16 of the Act would not clothe the said authority with a power to revise the assessment. In other words, the submission of the

learned counsel was that in order to vest himself with a power to revise the assessment which had completed and become final, the authorities

should take powers under the particular provisions of the Act in order to disturb the finality of the said assessment. We are not satisfied that this

contention has any merit. There is no dispute that the assessing authority had power to revise the assessment under S. 16 of the Act. The mere

omission to refer to S. 16 of the Act in the communication sent to the assessee does not, in any manner, show that the assessing authority did not

act under that particular provision. Taking the letter to the assessee into account, it would be clear that the assessing authority wanted to act only

under that provision. In these circumstances, we see no merit in this contention. The Tax Revision Case No. 294 of 1974 is partly allowed and

295 of 1974 is allowed. The petitioner will be entitled to its costs. Counsel's fee Rs. 250/-. One set (in T.C. No. 295 of 1974).