
(1954) 03 MAD CK 0040

In the Madras High Court

Case No : Tax Revision Case No. 49 of 1953

State of Madras

APPELLANT

Vs

Eastern Supplies Ltd., Madras

RESPONDENT

Date of Decision : 17-03-1954

Acts Referred:

Constitution of India, 1950 — Article 286(1)
Madras General Sales Tax (Turnover and Assessment) Rules, 1939 — Rule 16, 4
Madras General Sales Tax Act, 1939 — Section 3

Citation : AIR 1954 Mad 1117 : (1954) 67 LW 819 : (1954) 2 MLJ 548

Hon'ble Judges : Satyanarayana Rao, J;Rajagopalan, J

Bench : Division Bench

Advocate : Govt. Pleader, for the Appellant; T.T. Srinivasan and A.N. Rangaswami, for the Respondent

Final Decision : Allowed

Judgement

Satyanarayana Rao, J.—The assessment relates to the year 1949-50. The assessee is a dealer in groundnuts. On and after 26-1-1950 and before export on 31-1-1950, they purchased a quantity of 374 bags of groundnut for a sum of Rs. 21,355-2-0. The assessee claimed that this amount should be deducted from his turnover as it was not assessable to tax. The exemption was claimed under Article 286(1)(b) of the Constitution. The Appellate. Tribunal relying on the decision of the Supreme Court in -- "State of Tra-vancore-Cochin v. Bombay Co.,Ltd., Alleppey", AIR 1952 SC 306 (A) allowed the exemption on the ground that the

"sale for export involves a series of integrated activities commencing from the agreement of sale with the foreign buyer and ending with the delivery of the goods to a common carrier, for transport out of the country by land or sea."

On this reasoning, they held that the purchase of groundnut after 26-1-1950, was necessarily in a chain of such integrated activities which was contemplated by the Supreme Court in the aforesaid decision. The "purchase" in this case

before the Supreme Court was held to be the occasion for the export or the import of goods out of or into the territory and therefore was within the exemption under Article 286(1)(b) of the Constitution. But the Supreme Court in -- State of Travancore-cochin and Others Vs. Shanmugha Vilas Cashew Nut Factory and Others, made clear, that the anterior purchase was not part of the integrated activities contemplated by the Supreme Court in the earlier decision. At page 336 of the report, the following passage occurs, which shows that the view of the appellate Tribunal cannot be sustained. Their Lordships observed:

"The phrase "integrated activities" was used in the previous decision to denote that "such a sale" (i.e., a sale which occasions the export) "cannot be dissociated from the export without which it cannot be effectuated, "and the sale and the resultant export form part of a single transaction". It is in that sense that the two activities--the sale and the export were said to be integrated. A purchase for the purpose of export like production or manufacture for export is only an act preparatory to export and cannot, in our opinion be regarded as an act done "in the course of the export of the goods out of the territory of India", any more than the other two activities can be so regarded."

And again at p. 338, after quoting a passage from a recent writer, this is what their Lordships add:

"This passage shows that in view of the distinct character and quality of the two transactions, it is not correct to speak of a purchase for export as an activity so integrated with the exportation that the former could be regarded as done "in the course of the latter. The same reasoning applies to the first sale after import which is a distinct local transaction effected after the importation of the goods into the country has been completed, and having no integral relationship with it. Any attempt, therefore, to invoke the authority of the previous decision in support of the suggested extension of the protection of Clause (1)(b) to. the last purchase for the purpose of export and the first sale after import on the ground of integrated activities must fail."

2. In view of this clear pronouncement by the highest authority the assessee is not entitled to exemption in respect of the purchase price of the groundnut.

3. It was, however, contended on behalf of the assessee, that the point at which the groundnuts could be taxed was only the point of sale and not the point of purchase, and therefore, the levy by the department on this turnover was not justified. This argument, in our opinion, proceeds on an erroneous assumption. It is no doubt true that in the case of untanned hides and skins, Rule 16 provides that the point or the event at which the tax is attracted is the sale, but the turnover in such an event should be calculated under Rule 4 on the purchase price and not on the sale price. This is totally different from the case of groundnuts, as there is no similar rule regarding the purchase and sale of the groundnuts. We have, therefore, necessarily to fall back upon the charging section, Section 3, which directs that every dealer should pay for each year tax

on his total turnover. The turnover as provided by Sub-section (4) of Section 3 for the purpose of taxation, should be determined in accordance with the rules enacted under the provisions of the Act, Rule 4 provides that in the case of groundnuts, the turnover should be calculated on the amount at which goods were purchased by the dealer. The tax, therefore, is not with reference to the sale or purchase as such, but upon the dealer on the basis of his turnover, which is subjected to the tax by the charging section, Section 3.

This position is made clear also by the Supreme Court in -- State of Travancore-cochin and Others Vs. Shanmugha Vilas Cashew Nut Factory and Others, , where analogous provisions relating to cashewnuts were considered. Under Rule 4, Clause 2(b) in the case of cashew-nuts also, the turnover is to be calculated on the amount for which the goods were bought by the dealer. Adverting to this aspect of the matter, at page 334 of the report, it was observed, that u/s 3(4) of the Act the turnover is to be determined in accordance with the rules that might be prescribed, and Rule 4 of the rules framed under the Act prescribes that in the case of certain goods including cashew and its kernel the gross turnover of a dealer is the amount for which the goods were bought by him and in all the other cases, the amount for which the goods were sold by him.

4. In view of the language of the section and Rule 4 and in view of the observations of the Supreme Court in the above case it is clear that the dealer was rightly taxed by the department, and this turnover was included by the department in his total turnover. The revision is allowed and the order of the Appellate Tribunal is set aside. The petitioner is entitled to his costs, which is fixed at Rs. 125/-.