
(1973) 04 MAD CK 0037

In the Madras High Court

Case No : Tax Case No. 185 of 1969 Revision No. 116

State of Madras

APPELLANT

Vs

Sakthi and Company

RESPONDENT

Date of Decision : 23-04-1973

Acts Referred:

Central Sales Tax Act, 1956 — Section 6, 8, 9

Citation : (1974) 34 STC 458

Hon'ble Judges : V. Ramaswami, J;Ramanujam, J

Bench : Division Bench

Advocate : K. Venkataswami, First Assistant Government Pleader, for the Appellant; C. Venkatraman, for the Respondent

Judgement

Ramanujam, J.—The disputed turnover in this case is a sum of Rs. 88,494.33. The above turnover relating to the assessment year 1965-66 was claimed by the assessee as intra-State sales. But the assessing authority considered the said turnover to be inter-State sales of automobile parts. The assessee took the matter in appeal before the Appellate Assistant Commissioner contending that the said sum represented the second sales of automobile parts effected within the State of Madras which are exempted, and he questioned the finding of the assessing authority that the said sum represented inter-State sales. The Appellate Assistant Commissioner however upheld the view of the assessing authority that the sales in question were inter-State sales.

2. On a further appeal to the Tribunal, the assessee took an additional point apart from the points urged before the authorities below. He contended that even if the sales are taken as inter-State sales, in view of the principle laid down by the Supreme Court in *State of Madras v. N.K. Nataraja Mudaliar* [1968] 22 S.T.C. 376, the second sales of automobile parts being not taxable under the Madras General Sales Tax Act, 1959, the sales in question cannot be taxed under the Central Sales Tax Act. The revenue, however, contended that Section 9 of the Central Sales Tax Act, 1956, when it refers to the local sales tax law should be

taken to refer only to the law that existed on the date when the Central Sales Tax Act was enacted, that is, the Madras General Sales Tax Act, 1939, and that under the provisions of that Act automobile parts are liable only to multi-point tax and, therefore, the turnover in question can be subject to tax under the Central Sales Tax Act at the rate of 2 per cent and 2 1/2 per cent, which was the rate applicable to the local sales of automobile parts as per the provisions of the Madras General Sales Tax Act, 1939.

3. The Tribunal on the facts held that the transactions covered by the turnover in question are all inter-State sales and not local sales as alleged by the assessee. It, then proceeded to consider the question whether the turnover in dispute could be brought to charge under the Central Sales Tax Act and if so at what rate. The Tribunal agreed with the contention advanced by the revenue that Section 9 of the Central Sales Tax Act attracted only the provisions of the Madras General Sales Tax Act, 1939, and, therefore, the mode, method and manner of levy provided under the provisions of that Act alone has to be applied for assessment under the Central Act and automobile parts being subject to multi-point tax at the rate of 2 per cent and 2 1/2 per cent under the provisions of the Madras Act, there can be a levy on the disputed turnover at those rates under the Central Sales Tax Act.

4. The revenue also contended before the Tribunal that the levy under the Central Sales Tax Act should be independent of the provisions of the local Sales Tax Act if no C forms had been produced and, as such, the turnover in dispute should be taxed at 10 per cent and 11 per cent, as the case may be, as per the rate of Central sales tax prevailing during the relevant year. This contention was, however, not accepted by the Tribunal. The revenue aggrieved against the rejection by the Tribunal of its general submission that in the absence of C forms, the assessment under the Central Sales Tax Act should be independent of the rate provided under the local sales tax law has come to this court.

5. Before us it is contended by the learned Government Pleader that in view of Central Act 28 of 1969, amending Section 9 of the Central Sales Tax Act with retrospective effect from 1st April, 1964, the turnover in dispute has to be assessed at the rate provided under that Act without reference to the rate or the manner of levy of tax under the local law. It is also pointed out that in a subsequent decision rendered in C. A. No. 2108 of 1969 (State of Tamil Nadu v. K.A. Ramudu Chettiar & Co. [1973] 31 S.T.C. 470 the Supreme Court has held that Section 9 of the Central Sales Tax Act, after its amendment, attracted the provisions of the Madras General Sales Tax Act, 1989, till that Act was in force and the provisions of the Madras General Sales Tax Act, 1959, after it came into force. But that decision refers only to the powers of the authorities who are to assess and determine the turnover. But the rates at which the assessee has to be charged on his inter-State sales will have to be found out only from the provisions of the Central Sales Tax Act. We see considerable force in the contention put forward by the learned Government Pleader. Section 9 of the

Central Sales Tax Act, after its amendment by Central Act 28 of 1969, makes the position quite clear. Section 6 has been amended by introducing Sub-section (1A) to the effect that a dealer shall be liable to pay tax under the Central Sales Tax Act on a sale of goods effected by him in the course of inter-State trade or commerce notwithstanding the fact that no tax would have been leviable under the local sales tax law. Section 9(2) after its amendment provides that the authorities for the time being empowered to assess under the general sales tax law of the appropriate State shall assess and enforce the payment of tax under the Central Sales Tax Act.

6. In this case admittedly no C forms had been produced. Therefore, the assessee cannot claim the benefit of Section 8(1) of the Act. In the absence of C forms, tax provided u/s 8(2), that is, 10 per cent or 11 per cent, is the rate applicable to the turnover in dispute. Thus the amendment of the Central Sales Tax Act by Central Act 28 of 1969 enables the revenue to levy tax on the disputed turnover at 10 per cent or 11 per cent under the Central Sales Tax Act. The learned counsel for the assessee does not dispute the fact: that the order of the Tribunal in this case cannot be justified in view of Central Act 28 of 1969 amending the Central Sales Tax Act with retrospective effect and also in view of the decision of the Supreme Court in C. A. No. 2108 of 1969 (*State of Tamil Nadu v. K.A. Ramudu Chettiar & Co.* [1973] 31 S.T.C. 470). We have therefore to hold that the decision of the Tribunal holding that the transactions are taxable only at 2 per cent and 2 1/2 per cent is erroneous and that they are taxable at the rate of 10 per cent and 11 per cent as the case may be.

7. The learned counsel for the assessee, however, contends that the assessee is entitled to the benefit of exemption provided u/s 10 of the amending Act 28 of 1969. For claiming such exemption the conditions laid down in that section have to be satisfied. The learned counsel for the assessee contends that the assessee has not in fact collected tax on the sales of automobile parts on the ground that the sales are not taxable under the Central Sales Tax Act and that, in fact, no tax could have been levied or collected but for the Central Act 28 of 1969. But as the claim for exemption u/s 10 not having been made before the Tribunal, the Tribunal had no occasion to consider the tenability of that claim. For the application of Section 10 certain factual basis has to be established by the assessee. It has to be found out whether the assessee has not in fact collected any tax in respect of the disputed turnover for the grounds set out in the said section. We, therefore, feel that it is proper that the Tribunal should consider the point. The order of the Tribunal is, therefore, set aside and the matter is remitted back to the Tribunal for further consideration in the light of what has been stated above. There will be no order as to costs.