(1973) 07 MAD CK 0042

In the Madras High Court

Case No : Tax Case No. 387 of 1969 Revision No. 262 of 1969

State of Madras APPELLANT

Vs

Sheik Ismail and Sons RESPONDENT

Date of Decision : 02-07-1973

Acts Referred:

Citation : (1974) 34 STC 464

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

Bench : Division Bench

Advocate : K. Venkataswami, First Assistant Government Pleader, for the Appellant; N. Srinivasan, for the Respondent

Final Decision : Dismissed

Judgement

Ramanujam, J.—The assessees in this case are manufacturers of beedies, under the trade name of "Bavutta". For the assessment year 1963-64 they reported total and taxable turnovers of Rs. 4,19,122.39 and Rs. 3,284 50 respectively under the Madras General Sales Tax Act, 1959. The assessing authority after examining their accounts, took the view that they had actually sold beedi leaves, thread, etc., to the various contractors to the extent of Rs. 67,782.85. He, therefore, held that the said turnover is liable to tax at 2 per cent under the Act. The assessees however objected to the said proposal stating that the supply of beedi leaves to the contractors cannot amount to a sale, that, in fact, the supply was made along with the tobacco mixture for the purpose of rolling them into beedies, and that though in the contract between the assessees and the contractors, they referred to the supplies of beedies as one of sale, there was in fact no sale at all. The assessing authority, however, overruled the objection and proceeded to assess the said disputed turnover on the ground that there was actually a sale of beedi leaves and thread by the assessees to the contractors. The Appellate Assistant Commissioner also upheld the order of the assessing authority in this regard. There was a further appeal to the Sales Tax Appellate Tribunal. Before the Tribunal the assessees mainly relied on the decision of this court in T. P. S. R. Factory P. Limited v. Deputy Commercial Tax Officer [1967] 20 S.T.C. 419 and that of the Supreme Court in D. C. Dewan Mohideen Sahib and Sons v. United Beedi Workers'' Union [1964] 2 L.L.J. 633 in support of their case that the supply of beedi leaves and thread for the manufacture of beedies can never amount to a transaction of sale, even though the value of the beedi leaves and thread had been debited against the contractors at the time of the supply. The Tribunal upheld the assessees'' contention by a majority judgment; but held that the turnover to which the assessees will be entitled to relief was Rs. 64,498.35. Aggrieved against the order of the Tribunal, the State is before us.

2. According to the learned Government Pleader, the facts in this case cannot at all attract the decision of this court in T. P S. R. Factory P. Ltd. v. Deputy Commercial Tax Officer [1967] 20 S.T.C. 419 or that of the Supreme Court in D.C. Dewan Mohideen Sahib and Sons v. United Beedi Workers'' Union [1964] 2 L.L.J. 633 and, on the facts of this case, it is clear that the parties themselves specifically proceeded on the basis that there was a sale of beedi leaves as well as thread as is clear from the written agreement entered into between the parties. It is pointed out that in the case decided in T. P. S. R. Factory P. Ltd. v. Deputy Commercial Tax Officer [1967] 20 S.T.C. 419, there was no contract at all, but the only fact which was relied on by the revenue there was the debit entries made against the contractors for the value of the beedi leaves, etc., but that, in this case, the nature of the transaction between the assessees and the contractor has to be decided by the terms of the contract entered into by them, and that contract makes it quite clear that what the parties contemplated was an outright sale of beedi leaves as well as thread. The learned Government Pleader invites our attention to Clause (1) of the agreement which is as follows:

(1) I shall purchase tobacco, beedi leaves and thread from you and I shall pay for it at the ruling rate as fixed by you and for every mound of tobacco got from you I shall supply you with such quantity of beedies and receive payment at the rates fixed by you from time to time.

3. This clause, it is contended, makes it clear that the transaction between the parties can only be a transaction of sale of tobacco, beedi leaves and thread. It is urged by the revenue that when the agreement between the parties specifically refers to the transaction as a sale of tobacco, beedi leaves and thread by the assessees to the contractor, it is not open to the court to treat it otherwise, and that to treat it otherwise would mean a rewriting of the contract entered into between the parties. It is true that this is a special circumstance which was not present in T. P. S. R. Factory P. Ltd. v. Deputy Commercial Tax Officer [1967] 20 S.T.C. 419. The question is whether the above clause in the agreement will make any difference in the ultimate decision of the case.

4. As pointed out by the learned counsel for the assessees though Clause (1) of the agreement provides that the contractor has to purchase tobacco, beedi leaves and thread from the assessees at the fixed ruling rate, the later clauses in the agreement enjoin that the tobacco, beedi leaves and thread supplied by the

assessees should not be used for any purpose other than the manufacture of beedies for the assessees and that the tobacco, etc., supplied by the assessees had been entrusted to the contractor on trust and that the contractor should not sell those articles to anyone. He cannot also sell the beedies so manufactured to anyone other than the assessees. If there is any breach of the terms of the agreement by the contractor, he is made liable for damages for breach of the trust as well as breach of the contract. All the terms of the agreement read as a whole suggest that though the transaction of supply of tobacco, beedi leaves and thread is notionally shown as a sale by the assessees to the contractor, it has not really been treated as an outright sale. It has been treated notionally as a sale for a limited purpose of making debit entries for the value of tobacco, beedi leaves, thread, etc., supplied by the assessees to the contractor at the market price. Taking the entire bargain between the parties, we are not in a position to say, as is contended by the revenue, that there was in fact sale of tobacco, beedi leaves and thread by the assessees to the contractors for a price and thereafter there was a resale of beedies by the contractor to the assessees. Having regard to the terms of the agreement, which make the contractor a trustee or bailee for the articles supplied till the manufacture of beedies are completed and supplied to the assessees, there cannot be said to be any transfer of property in the tobacco, beedi leaves or thread. The entries in the accounts appears to have been made only to balance the cost of raw materials supplied and the cost of manufactured goods received. We had the advantage of perusing the account books of the assessees. The supply of tobacco, beedi leaves and thread by the assessees have been debited against the contractor in relation to a particular contract to manufacture beedies, and the accounts do not show that either the tobacco or beedi leaves or thread had been sold outright to the contractors.

5. It is also pointed out by the learned counsel for the assessees that at no point of time there was any payment at all by the contractor to the assessees towards the supply of tobacco, beedi leaves or thread. It has been clearly pointed out by this court in T. P. S. R. Factory P. Ltd. v. Deputy Commercial Tax Officer [1967] 20 S.T.C. 419, as follows:

It seems to us that inasmuch as the assessing authority was merely led by the use of the word ''sale'' in the account books without reference to other relevant facts relating to the elements that go to make or a sale of goods, the impugned orders are liable to be quashed, So far as the first category of transactions is concerned, the assessing authority should find out whether apart from the use of the word ''sale'' in the account books in the context of debiting the cost of materials supplied, there was transfer of property in the goods under an agreement for a price paid or promised therefore .

6. In this case we are not able to find any material apart from Clause (I) of the agreement referred to above to suggest that there was any transfer of property in the goods under an agreement for a price paid or promised therefore .The fact that the cost of the materials supplied to the contractor stands debited against

him on the date of supply can only be taken as a camouflage as has been pointed out in a similar case in D.C. Dewan Mohideen Sahib and Sons v. United Beedi Workers'' Union [1964] 2 L.L.J. 633. We are, therefore, of the view that on the facts the Tribunal has come to the right conclusion in this case.

7. The tax case is, therefore, dismissed with costs. Advocate''s fee Rs. 150.