

(1963) 07 MAD CK 0011

In the Madras High Court

Case No : Tax Case No. 51 of 1961 (Revision No. 30) and T.C.M.P. No's. 65 of 1961 and 88 of 1962

State of Madras

APPELLANT

Vs

Voltas Limited

RESPONDENT

Date of Decision : 12-07-1963

Acts Referred:

Constitution of India, 1950 — Article 286
Limitation Act, 1963 — Section 5

Citation : (1963) 14 STC 861

Hon'ble Judges : Srinivasan, J; Jagadisan, J

Bench : Division Bench

Advocate : Advocate General and G. Ramanujam, for Government Pleader, for the Appellant; C.S. Padmanabhan, for King and Partridge, Attorneys, for the Respondent

Final Decision : Dismissed

Judgement

Jagadisan, J.—The State of Madras is the revision petitioner. It questions the correctness of the order of the Sales Tax Appellate Tribunal,

Madras, holding that the turnover of Rs. 98,518 of the assessees (respondents) is exempt from taxation under the Madras General Sales Tax Act,

1939. The assessment year is 1955-56. The ground of exemption upheld by the Tribunal is that it relates to ""works contracts"" falling outside the

ambit of the Act as laid down by the Supreme Court in Gannon Dunkerley's case [1958] 9 S.T.C. 353 and by this Court in Sundaram Motors

case [1958] 9 S.T.C. 687 The Appellate Assistant Commissioner confirmed the finding of the Deputy Commercial Tax Officer that it related to

works contracts and was as such assessable to the extent of 70 per cent, of the turnover. The Tribunal held that the contracts involved labour and

skill and that each of the contracts was a composite bargain to furnish the customers of the assesseees with an air-conditioning equipment, together with all materials and parts which were to be found and supplied by the assesseees themselves. There was no element of sale of goods, according to the Tribunal in these contracts as they were in fact and in substance agreements to execute works for a stated consideration. The question of law that is raised is whether the turnover represents in part sale of goods and whether that part can be subjected to tax under the Act.

2. The assesseees are dealers in medicines, chemicals, typewriters, tractors and other articles and they are also engaged in the business of equipping buildings with air-conditioning plants. They undertake to do the work on a lump sum basis for which details showing the cost of plant and

accessory materials, labour charges and other miscellaneous expenses are given. The breakup of the turnover of Rs. 98,518 is as detailed below :

(This is extracted from the typed papers furnished by the State).

3. The assesseees filed a break-up statement before the Tribunal showing the value of materials, the value of labour, the value of contractor's work and the value of engineering fees involved in the execution of these contracts. These figures, to which detailed reference is not necessary, were

culled out from the account books maintained by the assesseees. The finding of the Tribunal in regard to this breakup statement of the assesseees

was however as follows :

But this breakup statement was intended only for the appellants' own information. It never formed part of the invoice supplied to the appellants'

customers nor did it form part of the bargain between them and the appellants. The bargain between them was only a composite contract for

service with materials supplied by the appellants,

4. This finding of the Tribunal sets out its interpretation of the relevant contracts and its view of the course of dealings between the assesseees and

their customers in regard to the erection of the air-conditioning plants. It is urged by the learned Advocate-General appearing for the State that the

view taken by the Tribunal is erroneous as every contract involved sale of goods and that such elements of sale should not be submerged by

reason only of the fact that the assesseees undertook as part of the very contract of sale, execution of the work necessary to instal the materials in

the proper form and in the proper place. It is pointed out that in the contract with the Indian Airlines Corporation there was a sale of articles of the value of Rs. 8,200. Similarly, in regard to the contract with the United Life Assurance Company goods of the value of Rs. 5,275 were sold. What is stressed on behalf of the State therefore is that it would not be a proper interpretation of the contracts involved in the case no forming the subject-matter of revision to hold that they were composite contracts not capable of being divided or split up into contracts of sale of goods and contracts to execute the necessary works.

5. The principles which should govern the determination of the question whether a transaction is a heterogeneous product of sale of goods coupled with execution of works or whether it is a homogeneous combination of these factors which is impossible of dissection and which presents in an overall view a contract of execution of a job or work, are not left in obscurity. The acid test is as laid down by the Supreme Court in *Carlill v. Carbolic Smoke Ball Co.*

G. m. b. H. Another v. State of Bihar [1961] 12 S.T.C. 449:

Whether on its true construction, the contract in question is a combination of two distinct agreements, one to sell materials and the other to supply labour and services or whether it is only one agreement entire and indivisible for execution of the works.

6. The approach to the solution of this question is straight and clear. Take the contract as a whole and find out whether in its essence it is an agreement to carry out a work for a stipulated consideration. If that is so, it would not be a sale on a net analysis and the possibility of a synthesis whereby a sale can be extracted from it would not affect the true position. If however the agreement discloses that there is a sale of materials with a further condition that they should be fixed and fitted in a particular manner for a particular purpose, the Act would not exempt the sale by reason of its forming a component of a contract which independently is outside the Act. It is true that a sale is not the less a sale because it is hitched to another contract, but a contract for work and labour though integrated with supply of materials cannot be truly described as an entity in two parts one consisting of sale of goods and the other representing remuneration for services done or to be done. In regard to execution of works by fitting air-conditioning plants in buildings and premises the question whether such a

contract could be notionally split up and treated as partly sales and as partly works contracts came to be considered by this Court in the decision in *State of Madras v. Voltas Limited* [1963] 14 S.T.C. 446. That case related to the very assessee before us as respondents. We held that there was no agreement between the contracting parties for the sale of any part of the machinery as such and that the Act would not apply to portions of the turnover treating them as representing sale transactions. The contention urged by the learned Advocate-General was raised before us in that case. It was contended for the department that the value of the materials which had to be supplied should be dealt with as the turnover relating to sales. We held that if the contract was an indivisible one calling for the fabricating of a unit for an overall price there was no warrant for splitting up this contract into parts and treating one part as a sale and the other as a labour contract. In our opinion, the principle of that decision is fully applicable to the facts of the present case and there is no need to discuss the matter further. The Tribunal reached the correct conclusion in holding that this turnover of Rs. 98,518 is wholly outside the ambit of the Act. The revision petition must therefore fail.

7. Though this is sufficient to dispose of the revision petition, we have to consider and deal with two petitions filed by the State, T.C.M.P. No. 65 of 1961 for leave to file additional grounds and T.C.M.P. No. 88 of 1962 for excusing the delay in filing T.C.M.P. No. 65 of 1961. The additional grounds sought to be raised in T. C. M. P. No. 65 of 1961 relate to a turnover of Rs. 3,67,608-89 np. which it is alleged has been wrongly excluded from taxation on the erroneous view that it represents sales in the course of import. The contention urged is that the documents of title pertaining to the goods were transferred after the arrival of the ship in the Madras Harbour when they were within the State territory and that the sales comprised in the turnover were purely local sales and should not be deemed to be part of the import activity. The order of the Tribunal is dated 12th August, 1960. T.C. No. 51 of 1961 which we have just now dealt with was filed on 27th October, 1960. That was preferred in time as the order of the Tribunal was communicated to the department on 7th September, 1960. The time prescribed by the Madras General Sales Tax Act, 1959, for preferring a revision petition to this Court is 60 days from the date

on which a copy of the order is served on the party in the manner prescribed. T.C.M.P. No. 65 of 1961 was presented in this Court on 23rd November, 1960. Viewed as a substantive revision petition it is clearly barred by limitation. But it is urged on behalf of the State that the application only seeks permission to raise additional grounds supplemental to the grounds already raised in the main revision petition, T. C. No. 51 of 1961.

8. The simple issue now is whether it is open to a revision petitioner u/s 38 of the Act to seek permission to raise questions of law relating to a turnover

not comprised in the petition by filing a miscellaneous petition subsequent to the filing of the revision petition after the expiry of the period of

limitation prescribed under the Act. To decide this point we have necessarily to refer to the provisions of the statute. Section 38 confers power on

this Court to revise certain orders of the department under the Act. Section 38(1) reads :

Within sixty days from the date on which a copy of the order under Sub-section (3) of Section 36 is served in the manner prescribed, any person

who objects to such order or the Deputy Commissioner may prefer a petition to the High Court on the ground that the Appellate Tribunal has

either decided erroneously or failed to decide any question of law :

Provided that the High Court may admit a petition preferred after the period of sixty days aforesaid if it is satisfied that the petitioner had sufficient

cause for not preferring the petition within the said period.

(2) The petition shall be in the prescribed form, shall be verified in the prescribed manner, and shall, where it is preferred by any party other than

the Deputy Commissioner be accompanied by a fee of one hundred rupees.

9. The prescribed form and manner is indicated in Rule 30 of the Madras General Sales Tax Rules, 1959. Rule 30, Sub-rule (1)(a), is relevant and

it is as follows :

Every appeal u/s 37(1) shall be in Form V and every petition u/s 38(1) shall be in Form VI and shall be verified in the manner specified therein.

10. Form VI contains the following two columns to be filled up by the petitioner:

5. Findings of the Appellate Tribunal (state in serial and appropriate order the relevant findings arrived at by the Tribunal).

6. Questions of law raised for decision by the High Court (here formulate the questions of law raised concisely, etc.).

11. There is a clear indication in the Act and the rules set out above that a memorandum of revision petition by the aggrieved party, whether it be

the State or the assessee, is not a general challenge of all the adverse findings against the State or the assessee, but is only a limited attack in regard

to the matters set out in columns 5 and 6 in Form VI. The scope of the revision petition is necessarily restricted to the questions raised in the

memorandum. Where the order of the Tribunal deals with different sets of taxable turnovers, each independent of the other or others, it is open to

the aggrieved party, the State or the assessee, to question one or more of the points decided adversely by filing a revision petition. Once a revision

petition is filed and that embraces only some of the points decided against the petitioner, it would not be unjust or improper to infer that the

petitioner has waived or abandoned his rights to challenge other portions of the impugned order which are against the party. In our opinion, there

cannot be a challenge of a particular turnover not included in the original memorandum of revision petition under the guise of permission to raise

additional grounds. The conception of urging additional or supplemental grounds is possible only with reference to matters already forming the

subject-matter of revision. This is nothing but common sense and we are unable to say that there is any warrant in the provisions of the Sales Tax

Act or any other law to deflect this plain and commonplace view that additional grounds are just further props to maintain the points raised and not

an enlargement of the scope of the revision petition. It is impossible to view a memorandum of revision petition as a mere structural framework,

elastic and expansive, capable of allowing the petitioner to raise questions of law relating to aspects not comprised in the original petition and

conveniently discovered before the revision petition is actually disposed of. We can understand and appreciate a position in which a particular

turnover of the assessee manifests several questions of law. For example an assessee might contend that purchase of cotton was exempt from tax

as it was in the course of import and he might also contend that even if it was a local purchase he was not the first purchaser in the State liable to

tax. In such a case if in the original memorandum of revision petition he has raised only one question, namely, that it was an import sale within the

constitutional ban of Article 286 of the Constitution, it may perhaps be legitimate to seek permission to raise a further question of law in regard to the

same matter, namely, that he is not the first purchaser. Whatever that be we are unable to hold that in a case where there are different turnovers

totally unconnected with one another it would be possible for an assessee or the State to challenge a part in the first instance and then challenge

other parts without filing an independent revision petition, by merely seeking permission of the Court under a miscellaneous petition. In our opinion

an application of this description, T.C.M.P. No. 65 of 1961, is not maintainable in law.

12. Nor are we satisfied that the grounds urged on behalf of the State are sufficiently convincing to grant the prayer. In the affidavit filed in support

of the application by the State it is averred as follows:-

At the time of the filing of the above tax case (T.C. No. 51 of 1961) certain facts and materials called for from the authorities below were awaited

and all the grounds could not be raised in the memorandum" of grounds at the first instance in the absence of those facts and materials. These

materials have since been obtained and it is just and necessary that the petitioner should be allowed to raise the following additional grounds.

13. Vagueness cannot go further. It is not disclosed what materials and facts were ascertained subsequent to the filing of the revision petition. It is

not stated how these subsequently discovered materials were necessary to raise the new grounds now sought to be raised. Even assuming that the

application is maintainable in law the Court has still a discretion in granting or refusing the permission sought for. The materials disclosed in the

affidavit in support of the application are so slender and flimsy that we have no hesitation in holding that adequate grounds have not been made out

for sustaining it.

14. T.C.M.P. No. 88 of 1962 is indeed an extraordinary application. It purports to be under s 5 of the Indian Limitation Act. It is obvious that that

provision of law has no application to a proceeding under the Sales Tax Act. If T.C.M.P. No. 65 of 1961 is only an application for leave to raise

additional grounds, which is what it purports to be, there can be no question of condoning the delay in such an application as the law does not

prescribe any period of limitation for an application of that description. It is open

to the Court to accept the petition or dismiss it. But, in any event, the question of delay does not arise. Inasmuch as this application wants the Court to condone the delay in filing the other application we must observe that it is wholly misconceived. A question of delay can come in only if it were to be held that T.C.M.P. No. 65 of 1961 is not in substance an application for leave to file additional grounds, though in form it purports to be so. We have already taken the view that the application T.C.M.P. No. 65 of 1961 cannot be maintained. It follows that this application should also fail.

15. In the result, T.C. No. 51 of 1961 is dismissed with costs. Counsel's fee Rs. 100. T.C.M.P. No. 65 of 1961 and T.C.M.P. No. 88 of 1962 are also dismissed but in the circumstances without costs.