
(2009) 12 MAD CK 0192

In the Madras High Court

Case No : Writ Petition No. 6618 of 2003 and WPMP No. 8510 of 2003

State of Tamil Nadu

APPELLANT

Vs

A. Jayaraman and Another

RESPONDENT

Date of Decision : 02-12-2009

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 15, 6(1A), 8, 8(1)

Citation : (2010) 30 VST 593

Hon'ble Judges : M.M. Sundresh, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : Haja Naziruddin, Special Government Pleader, for the Appellant;
None, for the Respondent

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—The point in issue in this writ petition is as to whether the levy of additional sales tax at one per cent so as to bring the rate of tax to four per cent in respect of inter-State sale of cotton during the assessment year 1996-97 is correct when the rate of tax under the local Act is only three per cent.

2. The facts are: The assessee had effected inter-State sale of cotton during the assessment year 1996-97 covered by C form declaration. The assessing officer levied tax at four per cent u/s 8(2A) of the Central Sales Tax Act, 1956 on the ground that the assessee was liable to pay additional sales tax. Thus, the assessing officer levied extra one per cent as additional sales tax under the above provision under the Central Sales Tax Act. Aggrieved by the order of the assessing officer, the assessee filed an appeal before the Appellate Assistant Commissioner, who allowed the appeal by accepting the contention of the assessee. The further appeal filed by the State before the Tamil Nadu Sales Tax Appellate Tribunal was dismissed by the Tribunal. Both the Appellate Assistant Commissioner as well as the Tribunal took the view that the additional sales tax and the additional surcharge had to be considered only in the case of inter-State sale not covered by C form falling u/s 8(2B) of the Central Sales Tax Act, 1956

and that so far as the declared goods are concerned when the inter-State sales are covered by C form declaration prescribed u/s 8(4) of the Central Sales Tax Act, the assessing officer cannot assess at a higher rate other than the rate prescribed under the local Act. The correctness of the said order is canvassed in this writ petition.

3. Section 8(2A) reads as follows:

8. Rates of tax on sales in the course of inter-State trade or commerce.-

(2A) Notwithstanding anything contained in Sub-section (1A) of Section 6 or Sub-section (1) or Clause (b) of Sub-section (2) of this section, the tax payable under this Act by a dealer on his turnover in so far as the turnover or any part thereof relates to the sale of any goods, the sale or, as the case may be, the purchase of which is, under the sales tax law of the appropriate State, exempt from tax generally or subject to tax generally at a rate which is lower than four per cent (whether called a tax or fee or by any other name), shall be nil or, as the case may be, shall be calculated at the lower rate.

4. A reading of this Sub-section shows that notwithstanding the provisions contained in Section 6(1-A), or Sub-section (1) or Sub-section (2)(b) of Section 8, the tax payable on inter-State sales of goods, which are exempt from tax under the State Act, shall be "nil", and where the State Act charges tax at a rate lower than four per cent, it shall be such lower rate. The Section can only be interpreted like this as above and not as suggested by the learned Special Government Pleader by adding the remainder up to four per cent.

5. Section 8(2A) opens with a non obstante Clause which gives an overriding effect over the provisions contained in Section 6(1A) and over Sub-section (1) as well as Clause (b) of Sub-section (2) of Section 8. The Sub-section seeks to provide exemption to a dealer with respect to his turnover in so far as his turnover or any part thereof relates to (a) sale of any goods, the sale or, as the case may be, the purchase of which is under the sales tax law of the appropriate State, exempt from tax generally or (b) where his turnover or any part thereof relates to the sale of any goods, the sale or purchase of which, is subject to tax, generally at a rate, which is lower than four per cent. In a case covered by (a), the Central sales tax will be "nil" while in a case falling under (b), Central sales tax shall be chargeable at the same lower rate at which the State sales tax is chargeable. The Explanation appended to Sub-section seeks to define the words "exempt from tax generally". The Explanation is couched in negative terms. It says that for the purposes of the said sub-section, a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the State sales tax law if (i) under the State law the sale or purchase of such goods is exempt only in specified circumstances, or (ii) if under the State law the sale or purchase of such goods is exempt only under specified conditions, or (iii) if under the State law, the tax is levied on the sale or purchase of such goods at specified stages, or (iv) where under the State law, the tax is levied otherwise than with

reference to the turnover of the goods vide Hindustan Paper Corpn. Ltd. and Others Vs. State of Kerala and Others, .

6. Section 8 of the Act fixes the rate of tax on the sales in the course of inter-State sale, trade, commerce and intercourse. The Act divides inter-State sales into four categories, namely, (i) sales to Government, (ii) sales of goods which are declared to be of special importance in the inter-State sale, trade and commerce, (iii) sales to registered dealers, and (iv) sales to others. A uniform rate is fixed for those sales u/s 8(1)(a), but subject to Section 8(2A). Section 14 declares that the goods enumerated therein are the goods of special importance in the inter-State trade and commerce. Section 15 prescribes the restrictions and conditions under which sales tax in respect of the turnover relating to those goods may be levied. The declared goods constitute a large portion of the goods sold in the inter-State trade. Section 8(2A) is incorporated with a view to see that the consumers in the States to which goods are imported are not placed at a disadvantage as compared to the consumers in the State from which the goods are imported. In fact, this provision is bound to facilitate inter-State trade. The purpose behind this Section is to see that the State Governments do not place the local consumers in a better position than the consumers outside.

7. Taking note of all these, the Section categorically provides that if the goods are exempted under the local Act, generally the tax under the Central Sales Tax Act is nil. If the local tax is less than four per cent, then the tax under the Central Sales Tax Act is also at a lower rate, as provided under the local Act. Incidentally, the Division Bench of this Court in the case of Sree Ayyanar Spinning and Weaving Mills Limited v. State of Tamil Nadu [1998] 109 STC 205, has also stated that moreover, it was impermissible to add additional sales tax to the lower rate of levy made in the public interest, in respect of the goods, to which a notification had been framed under Sub-section (5) of Section 8 of the Act. When it is the law laid down in respect of the goods for which the notification has been issued u/s 8(5) of the Act, there cannot be any levy of additional sales tax, as the Section clearly states that the Central sales tax would be at a lower rate as that of the rate fixed in the local Sales Tax Act.

8. For the reasons stated in the foregoing paragraphs, the writ petition is dismissed. No costs. The connected miscellaneous petition is consequently dismissed.