(1995) 07 MAD CK 0040

In the Madras High Court

Case No : Tax Case (Revision) No. 785 of 1993 (Revision No. 509 of 1993)

State of Tamil Nadu APPELLANT

Vs

Amra Press RESPONDENT

Date of Decision : 26-07-1995

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 3B

Citation : (1995) 07 MAD CK 0040

Hon'ble Judges : T. Jayarama Chouta, J;K.A. Thanikkachalam, J

Bench : Division Bench

Judgement

Thanikkachalam, J.—The department is the petitioner. The only question that arises for consideration in this tax revision is with regard to the

addition of notional profit of Rs. 2,97,630 (40 per cent gross profit on Rs. 7,44,073) to the value of the paper consumed. The assessee executed

the words contract. The assessee contended that the value of the materials used in works contract alone is assessable to tax and not on the sale

value of the said commodity. The department, on the other hand, contended that the sale value of the said commodity alone is assessable to tax

and not on the purchase value as contended by the assessee. While deciding this issue the Tribunal by placing reliance or clause (a) of rule 6-B of

the Tamil Nadu General Sales Tax Rules, 1959 held that the words ""market price"" implies price of the commodity prevalent at the time of purchase

by the appellant. In fact, the appellant has not dealt with the commodity in question. In the present case, the commodity purchased by the appellant

has been used in the works contract. Therefore, the question of adding gross profit to the value of the commodity does not arise. Under such

circumstances, the Tribunal held that addition of gross profit on the purchase value for the purpose of assessment was not correct. Accordingly the

assessment on the turnover of Rs. 2,97,630 was set aside. It is against this order the department is now in revision before this Court.

2. The learned Additional Government Pleader (Taxes) submitted that in view of the fact that the provision of rule 6-B of the Tamil Nadu General

Sales Tax Rules, 1959 has been struck down by this Court in the decision reported in Larsen and Toubro Limited v. State of Tamil Nadu 1993 88

STC 289, and in view of the fact new provision u/s 3B was introduced with retrospective effect from June 26, 1986, the order passed by the

Tribunal on the basis of rule 6-B of the Tamil Nadu General Sales Tax Rules, 1959 is unsustainable. It was, therefore, submitted that the matter

should go back to the assessing authority for the purpose of re-doing the assessment on the basis of the new provision u/s 3B of the Tamil Nadu

General Sales Tax Act, 1959 which came into effect from June 26, 1986. However, the learned counsel for the assessee submitted that the

Tribunal passed this on March 17, 1992 on which date rule 6-B was in the statute book. Therefore, the order passed by the Tribunal on the basis

of rule 6-B is in order. But it remains to be seen that after the decision rendered in Larsen and Toubro Limited v. State of Tamil Nadu 1993 88

STC 289 Mad above referred to, and after the introduction of the new section 3B, with retrospective effect from June 26, 1986, the order passed

by the Tribunal, dated March 17, 1992 on the basis of rule 6-B is unsustainable. Therefore, we set aside the order passed by the Tribunal and

remit back this issue to the file of the assessing officer, with a direction to re-do the assessment with regard to the materials used in the works

contract in accordance with the provisions contained in section 3B of the Tamil Nadu General Sales Tax Act, 1959 and also after taking into

consideration the decision rendered by this Court in Tamil Nadu Mosaic Manufacturers Association v. State of Tamil Nadu [1995] 97 STC 503 .

Accordingly this tax case (revision) filed by the department will stand allowed. No costs.

3. Petition allowed.