

(2012) 04 MAD CK 0009

In the Madras High Court

Case No : Tax Case (Revision) No. 1665 of 2006

State of Tamil Nadu

APPELLANT

Vs

Eastman Spinning Mills (P) Ltd.

RESPONDENT

Date of Decision : 19-04-2012

Acts Referred:

Central Sales Tax Act, 1956 — Section 5(3)

Tamil Nadu General Sales Tax Act, 1959 — Section 17, 31, 9

Citation : (2013) 60 VST 41

Hon'ble Judges : K. Ravichandra Baabu, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : R. Sivaraman, Special Government Pleader Taxes, for the Appellant;
C. Natarajan, for Inbarajan, for the Respondent

Final Decision : Dismissed

Judgement

Chitra Venkataraman, J.—The Revenue has filed the present tax case (revision) as against the order of the Sales Tax Appellate Tribunal

relating to the assessment year 1997-98 raising the following substantial questions of law:

(1) Whether, in the facts and in the circumstances of the case, the Tribunal has erred by holding that in the absence of a specific provision under the

respective Acts, the modification has to be followed while specific provision by way of section 5(3) of the Central Sales Tax Act has been enacted

by Central Act 103 of 1976 with effect from May 1, 1976 itself?

(2) Whether the Tribunal has overlooked the legal position that in availing of the benefits under a notification, the conditions stipulated therein

should be scrupulously complied with?

(3) Whether the order of the Tribunal is correct inasmuch there was no proof that

the goods exported and the goods sold to the exporter by the assessee were one and the same?

The assessee/respondent herein is a manufacturer and dealer in cotton yarn. The assessee is stated to have sold cotton yarn to M/s. Eastman

Exports, which is a registered exporter as per the Import and Export (Control) Act, 1947 by the Apparel Export Promotion Council. On the sale

of cotton yarn effected to the registered exporter, admittedly, the said exporter had manufactured cloth and, the same was exported. Placing

reliance on Notification No. 197(a)/1970 dated July 27, 1970, issued u/s 17 of the Tamil Nadu General Sales Tax Act, 1959, the assessee

claimed exemption in respect of sale of cotton yarn to the registered exporter. Incidentally, it is an admitted fact that the assessee is enjoying the

benefit of IFST waiver scheme. A perusal of the order of assessment, made on March 31, 1999, shows the assessee's status as a beneficiary of

IFST waiver scheme and accordingly, after computing the taxable turnover, the tax payable on the first sales of cotton yarn to the tune of Rs.

1,24,06,706 was granted waiver.

2. It is the case of the assessee that at the time of filing the original return, the assessee, however, did not make any claim based on Notification

No. 197(a)/1970 dated July 27, 1970 in respect of sale of cotton yarn to the registered exporter. However, subsequently, the assessee is stated to

have filed a revised return claiming the benefit of exemption notification. The filing of revised return is evident from the acknowledgement affixed in

the delivery book on July 27, 1998. Leaving this revised return for a moment, the fact herein is that except for calling for check of accounts before

passing the order of assessment, admittedly, no notice was issued by the assessing officer to the assessee. There are no material papers available in

the file produced before this court, indicating that the assessee was issued with a notice of assessment before finalising the assessment.

3. A reading of the order of assessment dated March 31, 1999 shows that there is no reference in the order as to the revised return filed by the

assessee also. Thus even though the assessment ultimately resulted in no liability as far as the first sales of cotton yarn was concerned, yet,

considering the fact that the assessing authority did not consider the revised return basing its claim for exemption under the notification, the assessee

preferred an appeal before the Appellate Assistant Commissioner.

4. The assessee pointed out that since the assessment was finalised even without a pre-assessment notice, he could not produce any documents

pertaining to the sale of cotton to various registered exporters within Tamil Nadu. Thus, in the course of the appeal proceedings, the assessee had

admittedly produced the following documents:

(1) Statement of sales of cotton yarn to various registered exports within Tamil Nadu.

(2) The proof of export such as invoice, bill of lading contract, and connected records such as A24, etc.

(3) The evidence for the purchasers, i.e., the purchasers of the appellant are registered exporters and the connected certificates and xerox copies.

(4) Sales details of cotton yarn in the accounts of the appellant copies of selected sale bills.

5. In considering the said claim in, the context of the notification, the first appellate authority came to the conclusion that in the absence of any

restrictive words in the notification that the export should be of cotton yarn alone, the assessee was entitled to the benefit of exemption under the

notification. Thus, the first appellate authority granted the relief to the assessee to the extent of Rs. 13,33,47,882 out of the disputed turnover of

Rs. 31,01,67,662. Aggrieved by the said order, the Revenue went on appeal before the Sales Tax Appellate Tribunal.

6. The Tribunal shows agreed with the contention of the assessee and thereby confirmed the view of the Appellate Assistant Commissioner that

when the purchaser of cotton yarn was a registered exporter and had been certified as so and had in fact exported the goods, the assessee was

entitled to the benefit of exemption under the notification. The Tribunal pointed out that it was no doubt true that there was no definition of the term

registered exporter"" in the notification granting exemption. Nevertheless, given the fact that the ""registered exporter"" has been defined under the

import and Export (Control) Act by the Apparel Export Promotion Council sponsored by the Government of India-Ministry of Textiles, the

purchaser from the assessee thus being a certified registered exporter, the claim of exemption could not be negated. Further, the Tribunal pointed

out that the grant of exemption or a concession was a prerogative of the State;

when the words used in the notification were clear and there being no implied repeal of the said notification after the introduction of the proviso to section 9 of the Tamil Nadu General Sales Tax Act, the assessee was entitled to the benefit of the notification. The Tribunal negated the stand of the Revenue that exemption would be available only if and when the registered exporter had exported the purchased yarn as such and not otherwise. The Tribunal pointed out that when the assessee had produced necessary documents as regards export by the registered exporter, the claim of the assessee could not be negated. It further pointed out that the principles u/s 5(3) of the Central Sales Tax Act and proviso to section 9 of the Tamil Nadu General Sales Tax Act were not applicable to the notification issued u/s 17 of the Tamil Nadu General Sales Tax Act. In the light of the above, the Tribunal upheld the order of the first appellate authority. Aggrieved by the same, the Revenue has filed the present tax case (revision).

7. The learned Special Government Pleader appearing for the petitioner submitted that given the fact that exemption notification contemplates exemption in respect of sale of cotton yarn by a dealer inside the State to a registered exporter exporting the goods, the mere absence of a specific reference that the export should be, of the self-same goods, namely, cotton yarn would not mean that irrespective of the character of goods, the exemption should be granted to the assessee. The production of documents or certificates evidencing the proof of export by the registered exporter would not be a sufficient compliance of the conditions of the notification. In other words, learned Special Government Pleader pointed out that when the notification had contemplated about cotton yarn as a subject matter for grant of exemption, the export must also be of cotton yarn alone and nothing else. In the above circumstances, the Tribunal committed serious error in adding words to the notification, which is impermissible in law.

8. Supporting the order of the Sales Tax Appellate Tribunal, learned senior counsel appearing for the assessee placed before us the evidence as regards the filing of the revised return before passing the final assessment order. He pointed out that even though the assessee was enjoying the benefit of IFST Waiver Scheme, yet, when the assessment order made no

reference to the revised return filed and the documents regarding export, necessarily, the assessee has to file an appeal as a protective measure to clear the facts relating to the assessment of the assessee. He further pointed out that section 9 proviso and the notification operated on different fields, proviso to section 9 of the Tamil Nadu General Sales Tax Act exempts penultimate sale of goods exported ""as such""; the notification issued prior to the introduction of the proviso, has a different purpose to achieve and is not concerned about export of the very same goods purchased. Thus, going by the plain words and the purport of the notification, the Tribunal rightly held that the assessee was entitled to exemption.

9. Heard learned Special Government Pleader appearing for the petitioner and the learned senior counsel appearing for the assessee and perused the materials placed before this court.

10. As far as the claim of the Revenue in this tax case revision is concerned, we do not find that there is any justifiable ground even to maintain this tax case for the simple reason that admittedly the assessee is a unit enjoying IFST Waiver Scheme, in which event, the tax effect on the sales effected by the assessee is nil. All that the assessing authority had to see in the matter of considering the claim on the benefit of IFST Waiver is to find out as to whether the assessee had complied with the terms of the waiver scheme. Given the fact that the assessing authority had passed an order, of assessment recognising the claim of the assessee for IFST waiver of the liability on the first sales of cotton yarn, we feel that it matters very little as to whether the notification would have any application to the case of the assessee herein. Thus the tax case filed before this court is a superfluous one and merits to be dismissed on the simple issue itself.

11. Leaving this aspect, on going through the files placed before us, as already pointed out, we find that there is no evidence of any notice of pre-assessment issued to the assessee before finalising the assessment. After the check of accounts, apparently satisfied of the claim on waiver, the assessing officer had proceeded to pass the assessment order accordingly. However, on the revised return filed, even though learned Special

Government Pleader would contend that there was no revised return filed before finalising the assessment yet, at page 131 of the assessment file,

the revised return filed by the assessee is available. Learned senior counsel

appearing for the assessee produced before us the evidence regarding the filing of revised return in the form of acknowledgement given in the acknowledgement book of having received the revised return. In the context of the claim made in the revised return as to the sale of yarn to the registered exporter herein and the claim for exemption based on the notification not being considered, the assessee preferred an appeal before the Appellate Assistant Commissioner. Although the assessee could have stopped with the relief granted in the order of assessment in the form of waiver, yet, apparently to keep the records straight, it had gone on appeal u/s 31 of the Tamil Nadu General Sales Tax Act before the Appellate Assistant Commissioner.

12. In support of its claim based on the exemption notification, the assessee filed documents, which are already extracted in the preceding paragraph. The notification which granted exemption to the registered dealers on the sale of yarn to registered exporters, reads as follows:

Sales of cotton yarn by mills to registered exporters-Exemption from local and Central sales tax (Tamil Nadu) Notification No. 197(a) of 1970

dated July 27, 1970. In exercise of the powers conferred by sub-section (1) of section 17 of the Tamil Nadu General Sales Tax Act, 1959 (Tamil

Nadu Act 1 of 1959), the Governor of Tamil Nadu hereby makes the exemption in respect of the tax payable under the Said Act by the mills in

Tamil Nadu, on the sales of cotton yarn manufactured by them to registered exporters, subject to the condition that the mills shall produce proof of

export, before the final check of their accounts for the year concerned, to the satisfaction of the assessing authority concerned.

13. A reading of the said notification shows that cotton yarn manufactured and sold to the registered exporter is granted exemption from payment

of tax under the Tamil Nadu General Sales Tax Act. Thus, the only condition subject to which exemption is granted apart from the above is that the

seller should produce proof of export before final check of accounts for the year concerned to the satisfaction of the assessing authority concerned.

Given the fact that the assessment itself was finalised even before a notice of assessment was issued and without reference to the revised return

filed, evidently, the assessee had no opportunity to produce any records evidencing the proof of export.

14. Leaving this aspect again, a reading of the notification shows that what is contemplated for exemption is the sale of cotton yarn manufactured

by a dealer to a registered dealer, as far as export aspect is concerned, absolutely there is no condition imposed therein that the export must be of

cotton yarn alone. In contra-distinction to the proviso to section 9 of the Tamil Nadu General Sales Tax Act, the notification which preceded the

introduction of the proviso to section 9 left the subject of export open, in the sense, there is no insistence of export of what was purchased by the

registered exporter. Thus in the absence of any specific restriction seen in the notification, one has to read it as an open ended clause on export.

Given the fact that the language of the notification is clear adopting the same process of interpretation as one would have done in the case of a plain

terms of section, we have no hesitation in accepting the case of the assessee that the notification leaves no restriction as to the subject of export to

condition the grant of exemption. Thus, as rightly pointed out by the Tribunal, the only other condition one has to read in the notification is that the

sale of yarn manufactured by a dealer inside the State is to registered exporters only. The Tribunal pointed out to the definition of "registered

exporter" to mean any applicant, firm or society and or a statutory organisation who is an exporter of garments whether manufacturer, exporter or

merchant exporter interested in the export.

15. In the face of the registration granted to the ultimate exporter as a registered exporter and the conditions of the notification thus satisfied, the

Tribunal held that the assessee had rightly claimed the benefit of exemption.

16. As far as the reference to section 5(3) of the Central Sales Tax Act, which is same as proviso to section 9 of the Tamil Nadu General Sales

Tax Act is concerned, the Tribunal pointed out that the exemption granted herein is of a general nature with reference to the goods which are

exported as such and are no different from what was purchased. Thus, in contrast to section 9 proviso, when the conditions prescribed in the

notification are in specific terms as referable to sale of cotton yarn to registered exporters, that the assessee has to produce the proof of export

before the final check of accounts and the documents produced by the assessee clearly substantiated the compliance of the conditions under the

notification, the Tribunal rightly accepted the case of the assessee, thereby,

rejected the appeal filed by the Revenue. Going by the clear terms of the notification and the fact that the Revenue implication in this case is zero either way, we have no hesitation in rejecting this revision. Accordingly, the tax case (revision) stands dismissed. No costs.