(1991) 08 MAD CK 0049

In the Madras High Court

Case No : T.C. No. 915 of 1982 (Revision No. 243 of 1982)

State of Tamil Nadu APPELLANT

Vs

General Engineering Stores RESPONDENT

Date of Decision : 13-08-1991

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 13(5), 2

Citation : (1993) 88 STC 531

Hon'ble Judges : A.S. Anand, C.J;Kanakaraj, J

Bench : Division Bench

Judgement

Dr. A.S. Anand, C.J.—The Revenue has filed this revision against the order of the Tamil Nadu Sales Tax Appellate Tribunal (Second

Additional Bench), Madras, dated February 20, 1982. The following fact situation was noticed by the Tribunal :

The purchase order is dated November 8, 1978, for the supply of M.S. rex bolts and nuts 38 x 16 mm. 3,000 kgs. for Rs. 16,080. Another

purchase order is dated November 10, 1978, for the supply of M.S. rex bolts and nuts 45x 16mm. 3,000 kgs. for Rs. 16,080 and in both the

purchase orders condition 12 stipulates that the supply should exactly conform to the quality of the approved samples and should be correct size

and superior quality materials as per the specification as otherwise the supply will be rejected and returned to the appellants at their cost. Clause

14 says that the bill of cost for the above should be presented in triplicate duly original stamped and pre-receipted. So both the purchase orders

would show that the purchasers have placed orders with the appellants for manufacture and supply of specific items of goods which were not in

existence and as such the goods were of future in nature. The letter dated June

25, 1978 from the general store-keeper, Katpadi, to the appellants

would show the rejection of the goods supplied under challan Nos. 213 dated January 27, 1979, 300/February 2, 1979 and 301/February 21,

1979 for defects, requesting the appellants to take back the same and to replace the same by goods as per specifications. Letter dated May 2,

1979, from the Superintending Engineer, Vellore, would show that the materials supplied by the appellants under two bills (279/January 27, 1979

and 303/February 20, 1979) have been rejected as defective. Letter dated June 23, 1979, from the Super intending Engineer, Vellore, would

show the return of goods under Bill Nos. 278/January 27, 1978, 300/February 19, 1979 and 305/February 21, 1979 as the goods were

defective. So the documents filed by the learned authorised representative would go to show that on the date of agreement entered into by the

appellants, the goods were not in existence and goods had to be manufactured by the appellants as per the specific orders by the purchasers. The

documents would show that though the goods were sent by the appellants to the purchasers, the purchasers did not accept the same and rejected

the supply after verification as the goods were found to be defective. Further the documents would show that the bills sent by the appellants were

also returned unpaid as the goods were rejected as defective in nature.

2. The only point, therefore, which requires consideration in the aforesaid facts situation, the correctness whereof has neither been disputed nor

doubted before us by the Revenue, is whether it is a case of sale return as held by the Appellate Assistant Commissioner or a case of unfructified

sale, as found by the Tribunal.

3. Clause 12 of the supply order clearly stipulated that the supply should exactly conform to the quality of the approved samples and should be of

correct size of superior quality material as per the specifications, and it was also contained therein that otherwise the supply would be rejected and

returned to the assessee at their cost. The purchase orders clearly go to show that orders have been placed with the assessees for manufacture and

supply of specific items of goods which at the time of the orders were not in existence and had yet to be manufactured. The goods in the

circumstances were only of future in nature and unascertained. Explanation 3(a) to section 2(n) of the Tamil Nadu General Sales Tax Act, 1959, postulates that where the goods are not in existence and supplied within the State, the sale would he concluded only at the time of the

appropriation of the goods by the purchaser. It is not the case of the Revenue, and indeed it was not so at any point of time, that the Tamil Nadu

Electricity Board had appropriated the goods which are the subject-matter of controversy, and finding the same not to be in accordance with the

specifications, rejected the sales, and while returning the goods, also returned the bills which had been presented by the assessee to the purchasers.

The Appellate Assistant Commissioner as well as the assessing authority fell in error in treating the case as a case of sale return. The expression

sale return"" is distinct from ""unfructified sale"" or ""rejected sale"". The distinction between the two expressions has been very succinctly brought out

by the Calcutta High Court in Metal Alloy Company Pvt. Ltd v. Commercial Tax Officer [1977] 39 STC 404. The Bench held as follows :

Return of goods and rejection of goods stand on different footings. Return of goods is a bilateral transaction brought about by the consent of the

seller and the purchaser, which consent may have been effected either prior to the delivery of the goods or subsequent to such delivery. Rejection

of goods, on the other hand, is on unilateral transaction governed by the provisions of the Contract Act or the Sale of Goods Act, open only to the

purchaser, the time-limit mentioned in that section has no application in the case of rejection of goods because the very act of rejection gave a go-

by to the transactions which were in furtherance of supposed sale.

The extract noticed above is apposite to the facts of the present case.

4. This Court also in Peico Electronics & Electricals Ltd. v. State of Tamil Nadu [1990] 78 STC 88 considered the distinction between ""sale

return"" and ""unfructified sales"" and found that where the turnover in question represented unfructified sales, the provisions of section 13(5) of the

Tamil Nadu General Sales Tax Act would not apply and the tax paid thereon was liable to he refunded. In the facts situation that we have noticed

in the opening part of this judgment, the conclusion is irresistible that it was not a case of sales return, but of unfructified sale, and, therefore, the

Appellate Assistant Commissioner as well as the assessing authority fell in error in holding the claim to he time-barred by invoking the provisions of

section 13(5) of the Tamil Nadu General Sales Tax Act. Those provisions, as already noticed, have no application to this case.

5. In view of the above discussion and the facts situation as noticed above, the view of the Tribunal that no sales took place to attract tax and that

the transaction was only a case of unfructified sale is unexceptionable. We do not find any error to have been committed by the Tribunal.

Consequently, this tax revision fails and it is dismissed with costs. Counsel''s fee Rs. 200.

6. Petition dismissed.

