

(1997) 09 MAD CK 0081

In the Madras High Court

Case No : T.C. (Revision) No's. 720 and 721 of 1985

State of Tamil Nadu

APPELLANT

Vs

Gopal Enterprises

RESPONDENT

Date of Decision : 24-09-1997

Acts Referred:

Central Sales Tax Act, 1956 — Section 6(2)

Citation : (1997) 09 MAD CK 0081

Hon'ble Judges : N.V. Balasubramanian, J; M.S. Janarthanam, J

Bench : Division Bench

Advocate : K. Elango, for the Appellant; N. Inbarajan, for the Respondent

Judgement

1. Desirable it is to pen down a common order, on the facts and in the circumstances of both these cases.

2. The assessee - Tvl. Gopal Enterprises, having, their place of business at No. 8 Jawans Bhavan, T.B. Road, Coimbatore-18 is one and the same

in both these actions relatable to the assessment year 1979-80.

3. (a) In the former action, the dispute is relatable to the claim of exemption of tax to a turnover of Rs. 2,21,157, as being subsequent inter-State

sales u/s 6(2)(b) of the Central Sales Tax Act, 1956 (Act No. 74 of 1956-for short "the CST Act").

(b) In the latter action, the dispute revolves in respect of two matters, namely, the first one is relatable to the tune of Rs. 9,680 being local sales and

therefore not exigible to tax under the CST Act and the second is relatable to the defective "C" forms filed to a turnover of Rs. 1,50,850.57 at 10

per cent, that is to say, in not giving, the concessional rate of tax assessed at 4 per cent.

4. In respect of the claims as above in these actions, we rather feel that no question of law arises and the same may be disposed of, on facts.

5. As respects the turnover of Rs. 2,21,157 alleged to be the second inter-State sales falling u/s 6(2)(b) of the CST Act, though there are tangible

materials proving the factum of the first inter-State sales, yet there is complete absence of materials as respects the proof of second inter-State

sales by the production of transfer of documents of title during the movement of goods from the State of Tamil Nadu to the State of Karnataka,

that is to say, Bangalore. In the absence of such materials, there is no other go for us, except to come to the conclusion that the assessee-dealers

miserably failed to prove the second inter-State sales during the course of movement of goods, in order to enable them to claim exemption u/s 6(2)

(b) of the CST Act. This aspect of the matter had not been duly taken into account by the Tamil Nadu Sales Tax Appellate Tribunal (Additional

Bench), Coimbatore-18 (for short, "the Tribunal") and that perhaps was the reason for the Tribunal to order for the deletion of the said turnover

from the taxable turnover of the assessee. In this View of the matter, we have no other go, except to set aside the order of the Tribunal, as

relatable to the claim of the assessee to the turnover of Rs. 2,21,157 as being second inter-State sales u/s 6(2)(b) of the CST Act.

6. As respects the first claim in the latter action relatable to a turnover of Rs. 9,680 we rather feel that on the facts and in the circumstances of that

case, the assessee's claim relatable to the said turnover, as being local sales and therefore not exigible to tax under the CST Act has to be

sustained.

7. The files relating to the exigibility of the assessee to tax under the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act No. 1 of 1959 -

for short, "the TNGST Act") were available with the assessing officer and such being, the case, plausible it is for them to have a peep or glance into

these files available with them to verify as to whether the assessee-dealers had paid tax in respect of the said turnover under the TNGST Act, as

being local sales. It appears that they have not done so. The files of the assessee-dealers, as relatable to the CST Act, had been produced before

us for our perusal. At page 135 of the files, the assessee-dealers had given particulars of invoice number, name of the parties and the amount for

which sales have been effected and they have also stated that on the turnover so effected, they have paid tax at 6 per cent under the TNGST Act.

With the available particulars in the files, as stated above, the assessing officer could have verified the same from the files of the assessee relating to

the assessment under the TNGST Act. Mr. K. Elango, learned counsel for the Revenue, also submitted that at his request, the assessing officers

verified the particulars as given in CST files of the assessee relating to the turnover of Rs. 9,680 with the particulars as available in the file of the

assessee under the TNGST Act and found out that the transactions relating to the turnover of Rs. 9,680 were of local sales and the tax at six per

cent had been paid under the TNGST Act.

8. In this view of the matter, the deletion of the turnover of Rs. 9,680 from the turnover assessed under the CST Act by the Tribunal as well as the

first appellate authority below is quite in order and therefore calls for no interference.

9. The second claim in the latter action is relating to furnishing of defective "C" forms for a turnover of Rs. 1,50,850.57 assessed at 10 per cent

by the assessing officer. The files have been produced for our perusal. From a perusal of the file, we are able to discern that even during the time of

original assessment, the defective "C" forms had been rectified and correct particulars have been furnished. Despite that, the assessing officer failed

to give the necessary and requisite relief of concessional rate of tax at 4 per cent. This aspect of the matter had been duly taken into account, not

only by the Tribunal, but also by the first appellate authority below and granted the relief to the assessee-dealers and such being the case, we rather

feel that no interference is called for on that aspect of the matter.

10. In fine, the former action, that is to say, T.C. (R) No. 720 of 1985 is allowed, while the latter action, that is to say, T.C. (R) No. 721 of 1985

is dismissed.

11. There will, however, be no order as to costs, in the circumstances of both these cases.