

(1991) 04 MAD CK 0075

In the Madras High Court

Case No : Tax Case No. 1573 of 1981 (Revision No. 624 of 1981)

State of Tamil Nadu

APPELLANT

Vs

Jeewanlal (1929) Ltd.

RESPONDENT

Date of Decision : 08-04-1991

Acts Referred:

Tamil Nadu General Sales Tax Rules, 1959 — Rule 6(d)

Citation : (1991) 04 MAD CK 0075

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

Bench : Division Bench

Advocate : R. Lokapriya, for the Appellant; N. Inbarajan, for the Respondent

Judgement

Raju, J.—The Revenue has filed the above tax revision case challenging the order of the Tribunal giving relief to the respondent-assessee in respect of a turnover to the tune of Rs. 3,51,000 taxable at 5 per cent., representing the sales turnover of its machinery comprised in the Hindusthan Metal Refinery and Rolling Mills giving them the benefit of rule 6(d) of the Tamil Nadu General Sales Tax Rules, 1959.

2. The assessee was carrying on business, running their units in the name and style of.

1. Mysore Premier Metal Factory, Tondiarpet, madras.

2. Sri Ganesar Aluminium Works, Washermanpet, Madras.

3. Hindusthan Metal Refinery and Rolling Mills, Tondiarpet, Madras.

The third unit, viz., Hindusthan Metal Refinery and Rolling Mills, Tondiarpet, Madras, appears to have been closed in the year 1968 and the machinery relating to the said unit was sold for Rs. 3,51,000 on February 28, 1975.

3. The respondent-assessee was assessed to tax on the basis of the returns for the year 1974-75, determining the total and taxable turnover at Rs.

77,50,003.30 and Rs. 69,29,054.36. On an appeal filed by the assessee, the appellate authority considered that the assessing officer has not properly examined the accounts and given his findings in detail, and therefore, in setting aside the order of assessment, it remanded the matter to the assessing authority for considering fresh assessment after detailed check of the accounts. Thereupon, the assessing officer passed a fresh order of assessment on May 8, 1980, and during that time, the turnover relating to the sale of machinery pertaining to Messrs. Hindusthan Metal Refinery and Rolling Mills, Madras, was subjected to tax at 4 per cent., overruling the objections of the assessee claiming benefit under rule 6(d) of the Tamil Nadu General Sales Tax Rules. On appeal, the Appellate Assistant Commissioner confirmed the assessment in respect of the said turnover. On further appeal, the Tribunal upheld the claim of the assessee, holding, in the light of the decision of this Court rendered in *Jeewanlal (1929) Limited v. Industrial Tribunal* [1975] 48 FJR 212 relating to the same assessee and in respect of the very unit which is in question, that the rolling mills was a unit separate and independent from the others. Relying upon the decision reported in *Deputy Commissioner (C.T.) Vs. K. Behanan Thomas*, the Tribunal accorded relief by invoking rule 6(d) of the Rules. Aggrieved, the Revenue has come up before this court.

4. Mr. Lokapriya, learned counsel appearing on behalf of the Revenue, contended that the Tribunal erred in relying upon the decision reported in *Deputy Commissioner (C.T.) Vs. K. Behanan Thomas*, and on the other hand the Tribunal should have followed the ratio of the case reported in *State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another*, and *The District Controller of Stores, Northern Railway, Jodhpur Vs. The Assistant Commercial Taxation Officer and Another*, . Learned counsel further contended that the assessee continued the business even after the sale of the said unit, and that being the position, it cannot be said that the assessee has sold its business as a whole entitling it to the exclusion of the turnover contemplated under rule 6(d) of the Tamil Nadu Sales General Tax Rules.

5. Mr. Inbarajan, learned counsel for the respondent-assessee, while reiterating the reasoning of the Tribunal, relied upon the decision of this Court rendered in *Jeewanlal (1929) Limited v. Industrial Tribunal* [1975] 48 FJR 212 which arose on account of the closure of the unit in question, the sale turnover of which is the subject-matter of consideration before us. As a matter of fact, the Sales Tax Appellate Tribunal also placed considerable reliance upon the judgment rendered in the case and came to the conclusion that having regard to the said decision of this Court, it is clear that rolling mills was a unit separate and independent of others. It is on that view, the Tribunal sustained the claim of the assessee.

6. On a careful consideration of the submissions of learned counsel appearing on either side and the case law relied upon by learned counsel, we are of the view that for the purpose of rule 6(d) of the Rules, if there is a sale of a particular unit of business as a whole, the benefit under the said rule can be invoked. Though a

person may carry on several lines of business, so long as each line of such business satisfied the norm to be treated as a separate unit of the business carried on, the benefit of the rule will enure in respect of the sale of such unit. See with advantage the decisions in *Monsanto Chemicals of India (P.) Limited Vs. The State of Tamil Nadu*, and *Deputy Commissioner (C.T.) Vs. K. Behanan Thomas*, .

7. Coming to the facts and circumstances of the case, we find from the decision of this Court in *Jeewanlal (1929) Limited v. Industrial Tribunal* [1975] 48 FJR 212 that though the assessee was carrying on three different types of business under different trade names, the industrial licences were separate for the utensils department and the rolling mills department, and the two departments always existed as separate departments, with different types of activities. Notwithstanding the fact that there was one union of workmen and the factory licence was common for all three units the management was common and common balance-sheet was prepared for the entire factory, this Court upheld the finding of the Industrial Tribunal that having regard to the nature of the work carried on in the rolling mills section and the independent nature of the same, the said unit stood divorced and separate from the other two units. Functionally, the court held the unit which has been closed and disposed of to be a separate and independent unit. As a matter of fact, this court was of the view that even if it is held that the rolling mills section is not a separate undertaking, still the rolling mills section as an independent and separate unit of the main undertaking could be closed. It is based on the said findings of this Court that the Sales Tax Appellate Tribunal sustained the plea of the assessee, particularly noticing the fact that no part of the business pertaining to the rolling mills which has been closed has been retained or was being carried on. In the light of the peculiar circumstances of the case and the categorical findings rendered by the Tribunal, we find no error of law in the order of the Tribunal warranting our interference in this revision. The two decisions relied upon by the Revenue have no relevance in the case on hand since rule 6(d) of the Rules was not the subject-matter of consideration therein as in the present case.

8. Further, we are of the view that the finding of the Tribunal that the unit in question is an independent one and the same has been sold as a whole, rendering the assessee eligible to claim the benefits of rule 6(d) of the Tamil Nadu General Sales Tax Rules, is correct and does not suffer from any infirmity warranting our interference. Consequently we see no reason to interfere with the order of the Tribunal.

9. The tax revision case fails and shall stand dismissed. Under the circumstances, we make no order as to costs.

10. Petition dismissed.