

(1997) 11 MAD CK 0058

In the Madras High Court

Case No : Tax Case (Revision) No. 1303 of 1990

State of Tamil Nadu

APPELLANT

Vs

Kapil Agencies

RESPONDENT

Date of Decision : 28-11-1997

Acts Referred:

Central Sales Tax Act, 1956 — Section 3, 6(1), 6(2)(b), 9(2)

Citation : (1997) 11 MAD CK 0058

Hon'ble Judges : M.S. Janarthanam, J;K.P. Sivasubramaniam, J

Bench : Division Bench

Judgement

Janarthanam, J.—This revision, at the instance of the Revenue, is directed against the order dated 4th day of July, 1989 of the Tamil Nadu

Sales Tax Appellate Tribunal (Main Bench), Madras-104 (for short, "the Tribunal") and made in T.A. No. 70 of 1988 relating to the assessment year 1985-86.

2. The assessee-Tvl. Kapil Agencies are dealers in iron and steel, having their place of business at No. 72, Sembudoss Street, Madras-1.

3. The assessee, it appears, effected the purchase of iron and steel from Steel Enterprises, Bombay by two invoices, namely, SE/84-85/520 dated

October 14, 1985 to the tune of Rs. 1,21,800 and SE/84-85/590 dated November 4, 1985 to the tune of Rs. 1,00,870. The iron and steel so

purchased were stated to have been sold in transit to Travancore Electric Chemical Industries Limited, Chingavanam Post, Kottayam and to

Kirloskar Electric Company Limited, Malleswaram West, Bangalore-55 respectively by two invoices, namely, KA/84-85/942 dated October 16,

1985 to the tune of Rs. 1,26,875 and KA/84-85/996 dated November 6, 1985 to the tune of Rs. 1,09,673-20, totalling to Rs. 2,36,548.20.

4. During the assessment proceedings, the dealers have claimed that the above sales of iron and steel were outside the State of Tamil Nadu and so,

they will not come under the preview of the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act No. 1 of 1959 - for short, "the

TNGSTA") or the Central Sales Tax Act, 1956 (Act No. 74 of 1956 - for short "the CSTA").

5. This sort of a claim made by the assessee-dealers was not accepted by the assessing officer and the assessing officer, in turn, after scrutiny of

the connected documents and records found that the transactions will fall u/s 3(b) of the CSTA. Since no "C" forms and "E1" forms were filed in

support of the turnover of Rs. 1,09,673.20, he levied tax at eight per cent and in respect of the sales turnover to the tune of Rs. 1,26,875 he levied

tax at four per cent, in view of the fact that "C" forms had been produced. As the taxable turnover was also not returned in the prescribed manner

and no tax was paid, he also levied penalty at fifty per cent of the tax u/s 9(2) of the CSTA read with section 12(5)(iii) of the TNGSTA.

6. The aggrieved assessee filed an appeal in CST No. 113 of 1987 before the Appellate Assistant Commissioner (CT) 1, Madras-108 (for short,

the AAC") who, in turn, after taking into consideration the relevant materials placed on record and of course, after hearing the respective

representatives on both sides, recorded a finding that the assessing officer had rightly brought the turnover of Rs. 1,26,875 at four per cent being

the transactions covered by "C" forms, falling u/s 6(1) of the CSTA.

7. As regards the turnover of Rs. 1,09,673.20, he remanded the matter to the assessing officer, giving an opportunity to the assessee-dealers for

the production of "C" forms, so as to enable them, on such forms being produced, to have the said turnover assessed at the concessional rate at

four per cent. As regards the penalty imposed, he was of the view that since the assessee included the entire turnover under "total turnover" and he

claimed exemption on the ground of sales, falling u/s 6(2)(b) of the CSTA, it cannot be stated that there was any incorrect or incomplete filing of

return and consequently, the penalty levied by the assessing officer u/s 9(2) of the CSTA read with section 12(5)(iii) of the TNGSTA is not

sustainable and therefore, the penalty so imposed had been set aside. Consequently, the appeal was partly allowed, partly remanded and partly

dismissed.

8. The assessee-dealers agitated the matter further before the Tribunal, as stated above. The Tribunal, in turn, of course, after taking into

consideration the relevant materials placed on record and hearing the respective representatives on either side, but without going into the tenability

or otherwise of the legal submissions made on either side, passed an order as below :

..... we are inclined to adopt 50 : 50 in respect of the disputed turnover of Rs. 2,36,548 taxable at 4 per cent. The assessing authority is

directed to assess the turnover accordingly and for the purpose of examining "C" forms whether they are otherwise in order, the remand order of

the Appellate Assistant Commissioner will stand. In the result, the appeal is partly allowed.

The present action has been resorted to by the Revenue, as stated above.

9. From the submissions of Mr. R. Mahadevan, learned Government Advocate (Taxes) representing the Revenue and Mr. Trilokchand Chopta,

learned counsel appearing for the assessee, the one and only point that crops up for consideration is as to Whether the order of the Tribunal, as

stated above, on the facts and in the circumstances of the case, is sustainable in law ?

10. Right from the beginning, the contention of the Revenue is that the abovesaid turnover represented inter-State sales falling u/s 3(b) of the

CSTA. On the contrary, it is the contention of the assessee-dealers that the said sales turnover were effected outside the State of Tamil Nadu and

so, they would not come within the purview of either TNGSTA or CSTA.

11. From a perusal of the order of the Tribunal, we are unable to discern any discussion on any of the contentions of the respective parties and the

Tribunal simply adopted a via media approach, as stated above. We are unable to understand as to how it will be permissible for the Tribunal to

adopt such an approach, on the facts and in the circumstances of the case. There is no other go for the Tribunal, on the facts and in the

circumstances of the case, except to answer the legal contentions raised on either side. Since those contentions had not been discussed and

considered and a finding had been recorded, the order of the Tribunal, as it stands now, cannot be allowed to stand. The order of the Tribunal is

therefore set aside and the matter is remitted back to the Tribunal for consideration afresh, in the light of the legal contentions advanced on either side.

12. The tax case (revision) is thus disposed of. No costs.

13. Petition disposed of accordingly.